Supreme Court, U.S.
FILED
2006
OFFICE OF THE CLERK

No. 05-0511

IN THE

Supreme Court of the United States

ROBERT SASSON,

Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DAVID A. BOONE
SUSAN D. SILVEIRA
LAW OFFICES OF DAVID A. BOONE
1611 The Alameda
San Jose, CA 95126
(408) 291-6000

JAMES K. ROBERTS
ROBERTS & ELLIOTT
10 Almaden Boulevard, Suite 500
San Jose, CA 95113
(408) 275-9800

SETH P. WAXMAN
CRAIG GOLDBLATT
Counsel of Record
DANIELLE SPINELLI
WILMER CUTLER PICKERING HALE AND DORR LLP
2445 M Street, N.W.
Washington, DC 20037
(202) 663-6000

LISA LYNCH
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

QUESTION PRESENTED

The bankruptcy jurisdiction statute, 28 U.S.C. § 1334(b), grants district courts jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 157(a) in turn provides that district courts may refer such proceedings to "the bankruptcy judges for the district."

The general federal supplemental jurisdiction statute, 28 U.S.C. § 1367(a), grants district courts jurisdiction, "in any civil action of which the district courts have original jurisdiction," over "claims that are so related to claims in the action . . . that they form part of the same case or controversy under Article III of the United States Constitution."

The question presented, which has divided the courts of appeals, is whether bankruptcy courts may exercise the general supplemental jurisdiction provided in section 1367(a) to hear claims that fall outside section 1334(b)'s more restrictive grant of jurisdiction over matters "related to" the bankruptcy case.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES v

OPINIONS AND JUDGMENT BELOW 1

JURISDICTION 2

STATUTORY PROVISIONS INVOLVED 2

INTRODUCTION 3

STATEMENT OF THE CASE 7

REASONS FOR GRANTING THE WRIT 10

I. THE COURTS OF APPEALS HAVE DIVIDED ON WHETHER BANKRUPTCY COURTS MAY EXERCISE SUPPLEMENTAL JURISDICTION UNDER SECTION 1367 10

II. THIS CASE IS A PARTICULARLY APPROPRIATE VEHICLE TO RESOLVE THE CIRCUIT SPLIT BECAUSE IT INVOLVES A RECURRING PRACTICAL ISSUE 14

III. THE DECISION BELOW IS INCORRECT. 18

A. The Specific Grant Of "Related To" Bankruptcy Jurisdiction Should Control Over The General Grant Of Supplemental Jurisdiction In Section 1367 18

B. Congress Has Provided For Referral To The Bankruptcy Court Only Of The District Court's Section 1334 Jurisdiction—Not Supplemental Jurisdiction Exercised Under Section 1367 20

CONCLUSION 21

APPENDIX A: Opinion of the United States Court of Appeals for the Ninth Circuit 1a

TABLE OF CONTENTS—Continued

Page

APPENDIX B: Order of the Court of Appeals Denying Rehearing and Rehearing *En Banc* 19a

APPENDIX C: Opinion of the Ninth Circuit Bankruptcy Appellate Panel 21a

APPENDIX D: Hearing Transcript 43a

APPENDIX E: Order of the United States Bankruptcy Court for the Northern District of California 53a

TABLE OF AUTHORITIES

CASES

Page(s)

Abramowitz v. *Palmer*, 999 F.2d 1274 (8th Cir. 1993) 15

Adams v. *Prudential Securities, Inc. (In re Foundation for New Era Philanthropy)*, 201 B.R. 382 (Bankr. E.D. Pa. 1996) 13

Aerni v. *Columbus Federal Savings (In re Aerni)*, 86 B.R. 203 (Bankr. D. Neb. 1988) 12

American Express Centurion Bank v. *Losanno (In re Losanno)*, 291 B.R. 1 (Bankr. D. Mass. 2003) 15

ATS Cases, Inc. v. *Belli (In re Belli)*, 2005 WL 3263925 (Bankr. D. Mass. June 29, 2005) 15

Baker v. *Friedman (In re Friedman)*, 300 B.R. 149 (Bankr. D. Mass. 2003) 16

Banc of America Investment Services, Inc. v. *Fraiberg (In re Conseco)*, 305 B.R. 281 (Bankr. N.D. Ill. 2004) 13

Barrows v. *Illinois Student Assistance Commission (In re Barrows)*, 182 B.R. 640 (Bankr. D.N.H. 1994) 15

Bass v. *Denney (In re Bass)*, 171 F.3d 1016 (5th Cir. 1999) 5, 11, 18, 20

Bobroff v. *Continental Bank (In re Bobroff)*, 766 F.2d 797 (3d Cir. 1985) 5, 11

Boyajian v. *DeLuca (In re Remington Development Group, Inc.)*, 180 B.R. 365 (Bankr. D.R.I. 1995) 13

Builders Steel Co. v. *Heidenreich (In re Heidenreich)*, 216 B.R. 61 (Bankr. N.D. Okla. 1998) 16

Celotex Corp. v. *Edwards*, 514 U.S. 300 (1995) 3, 9, 11, 17

Central Virginia Community College v. *Katz*, 126 S. Ct. 990 (Jan. 23, 2006) 18

Cook v. *Commodity Credit Corp. (In re Earl Roggenbuck Farms, Inc.)*, 51 B.R. 913 (Bankr. E.D. Mich. 1985) 12

TABLE OF AUTHORITIES—Continued

Page

Cotten v. *Cotten (In re Cotten)*, 318 B.R. 583 (Bankr. W.D. Okla. 2004) 15
Cowen v. *Kennedy (In re Kennedy)*, 108 F.3d 1015 (9th Cir. 1997) 9
DaSilva v. *American Savings*, 145 B.R. 9 (S.D. Tex. 1992) 13
Davis v. *Warren (In re Davis)*, 216 B.R. 898 (Bankr. N.D. Ga. 1997) 13
Dechert Price & Rhoads v. *Direct Satellite Communications, Inc. (In re Direct Satellite Communications, Inc.)*, 91 B.R. 5 (Bankr. E.D. Pa. 1988) 12
Doctors Hospital of Hyde Park, Inc. v. *Desnick (In re Doctors Hospital of Hyde Park, Inc.)*, 308 B.R. 311 (Bankr. N.D. Ill. 2004) 13
Finley v. *United States*, 490 U.S. 545 (1989) 4
First Omni Bank v. *Thrall (In re Thrall)*, 196 B.R. 959 (Bankr. D. Colo. 1996) 13, 15
Fisher v. *Federal National Mortgage Ass'n (In re Fisher)*, 151 B.R. 895 (Bankr. N.D. Ill. 1993) 13
Goger v. *Merchants Bank of Atlanta (In re Feifer Industries)*, 141 B.R. 450 (Bankr. N.D. Ga. 1991) 12
Goldstein v. *Marine Midland Bank (In re Goldstein)*, 201 B.R. 1 (Bankr. D. Me. 1996) 13
Hall v. *Davenport*, 1996 WL 34674, 76 F.3d 372 (4th Cir. 1996) 16
Halvajian v. *Bank of New York*, 191 B.R. 56 (D.N.J. 1995) 13
Harris v. *United States Fire Insurance Co.*, 162 B.R. 466 (E.D. Va. 1994) 16
Hawkins v. *Eads (In re Eads)*, 135 B.R. 387 (Bankr. E.D. Cal. 1991) 12
Henneghan v. *Columbia Gas of Virginia, Inc. (In re Henneghan)*, 2005 WL 2267185 (Bankr. E.D. Va. June 22, 2005) 12

TABLE OF AUTHORITIES—Continued

Page

Hi-Qual Roofing & Siding Materials, Inc. v. *Ridsdale (In re Ridsdale)*, 286 B.R. 238 (Bankr. W.D.N.Y. 2002) 16
In re Combustion Engineering, 391 F.3d 190 (3d Cir. 2004) 17
In re Johns-Manville Corp., 801 F.2d 60 (2d Cir. 1986) 17
In re Wood, 52 B.R. 513 (Bankr. N.D. Ala. 1985) 12
Jinks v. *Richland County, S.C.*, 538 U.S. 456 (2003) 4
Jones v. *Woody (In re W.J. Services, Inc.)*, 139 B.R. 824 (Bankr. S.D. Tex. 1992) 12
Kinney v. *Higher Education Assistance Foundation (In re Kinney)*, 114 B.R. 670 (Bankr. D. Neb. 1990) 12
Klein v. *Civale & Trovato, Inc., (In re Lionel Corp.)*, 29 F.3d 88 (2d Cir. 1994) 4, 12
Lang v. *Lang (In re Lang)*, 293 B.R. 501 (BAP 10th Cir. 2003) 16
Liquidating Trust v. *Carramore Limited (In re Ha-Lo Industries, Inc.)*, 330 B.R. 663 (Bankr. N.D. Ill. 2005) 13
Longo v. *McLaren (In re McLaren)*, 3 F.3d 958 (6th Cir. 1993) 15
Maislin Industries, U.S., Inc. v. *Certified Brokerage Systems, Inc. (In re Maislin Industries)*, 75 B.R. 170 (Bankr. E.D. Mich. 1987) 13
Masterwear Corp. v. *Rubin, Baum, Levin, Constant & Friedman (In re Masterwear Corp.)*, 241 B.R. 511 (Bankr. S.D.N.Y. 1999) 12
McCarthy v. *Radcliffe (In re Radcliffe)*, 317 B.R. 581 (Bankr. D. Conn. 2004) 12
McGlynn v. *Credit Store, Inc.*, 234 B.R. 576 (D.R.I. 1999) 13
Miller v. *Kemira (In re Lemco Gypsum, Inc.)*, 910 F.2d 784 (11th Cir. 1990) 5, 11

TABLE OF AUTHORITIES—Continued

Page

Montana v. *Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189 (9th Cir. 2005) 4, 12

N.I.S. Corp. v. *Hallahan (In re Hallahan)*, 936 F.2d 1496 (7th Cir. 1991) 16

Neill v. *Borreson (In re John Peterson Motors Inc.)*, 56 B.R. 588 (Bankr. D. Minn. 1986) 12

Northern Pipeline Construction Co. v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982) 11, 20

Official Committee of Unsecured Creditors v. *Ganz (In re Summit Airlines, Inc.)*, 160 B.R. 911 (Bankr. E.D. Pa. 1993) 12

Official Committee of Unsecured Creditors v. *Riviera Medical Development Corp. (In re South Bay Medical Associates)*, 184 B.R. 963 (Bankr. C.D. Cal. 1995) 12

Official Creditors' Committee of Products Liability & Personal Injury Claimants v. *International Insurance Co. (In re Pettibone Corp.)*, 135 B.R. 847 (Bankr. N.D. Ill. 1992) 13

Pacor, Inc. v. *Higgins*, 743 F.2d 984 (3d Cir. 1984) 3, 11

Petrolia Corp. v. *Elam (In re Petrolia Corp.)*, 79 B.R. 686 (Bankr. E.D. Mich. 1987) 12

Pierce v. *Conseco Finance Service Corp. (In re Lockridge)*, 303 B.R. 449 (Bankr. D. Ariz. 2003) 12

Porter Capital Corp. v. *Hamilton (In re Hamilton)*, 282 B.R. 22 (Bankr. W.D. Okla. 2002) 17

Porter v. *NationsCredit Consumer Discount Company (In re Porter)*, 295 B.R. 529 (Bankr. E.D. Pa. 2003) 15

Providers Fidelity Life Insurance Co. v. *Tidewater Group, Inc. (In re Tidewater Group, Inc.)*, 63 B.R. 670 (Bankr. N.D. Ga. 1986) 12

Raygor v. *Regents of the Univ. of Minn.*, 534 U.S. 533 (2002) 4

TABLE OF AUTHORITIES—Continued

Page

Romar International Georgia, Inc. v. *SouthTrust Bank of Alabama (In re Romar International Georgia, Inc.)*, 198 B.R. 401 (Bankr. M.D. Ga. 1996) 13

Securities Investor Protection Corp. v. *Murphy (In re Selheimer & Co.)*, 319 B.R. 384 (Bankr. E.D. Va. 2005) 12

Security Farms v. *International Brotherhood of Teamsters*, 124 F.3d 999 (9th Cir. 1997) 12

Simmons v. *Ford Motor Credit Co. (In re Simmons)*, 224 B.R. 879 (N.D. Ill. 1998) 13

Simmons v. *Johnson, Curney & Fields, P.C. (In re Simmons)*, 205 B.R. 834 (Bankr. W.D. Tex. 1997) 13

Singer v. *Adamson (In re Adamson)*, 334 B.R. 1 (Bankr. D. Mass. 2005) 13

Snyder v. *Devitt (In re Devitt)*, 126 B.R. 212 (Bankr. D. Md. 1991) 16

SouthTrust Bank v. *Alpha Steel Co., Inc. (In re Alpha Steel Co., Inc.)*, 142 B.R. 465 (M.D. Ala. 1992) 13

Steele v. *Ocwen Federal Bank (In re Steele)*, 258 B.R. 319 (Bankr. D.N.H. 2001) 13

Torkelsen v. *Maggio (In re Guild & Gallery Plus, Inc.)*, 72 F.3d 1171 (3d Cir. 1996) 5

Total Petroleum, Inc. v. *Coral Petroleum, Inc. (In re Coral Petroleum, Inc.)*, 62 B.R. 699 (Bankr. S.D. Tex. 1986) 12

United Mine Workers of America v. *Gibbs*, 383 U.S. 715 (1966) 4

Valencia v. *Lucero (In re Valencia)*, 213 B.R. 594 (D. Colo. 1997) 16

Walker v. *Cadle Co. (In re Walker)*, 51 F.3d 562 (5th Cir. 1995) 5, 11, 20

Wilcox v. *Houghton (In re Houghton)*, 164 B.R. 146 (Bankr. W.D. Wash. 1994) 13

TABLE OF AUTHORITIES—Continued

Page

Wisconsin Department of Industry, Labor & Human Relations v. *Marine Bank Monroe (In re Kubly)*, 818 F.2d 643 (7th Cir. 1987) 5, 11, 16

STATUTES

Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 20
Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 10
11 U.S.C. § 523 ..... 2, 6, 8, 14
11 U.S.C. § 541 15
28 U.S.C. § 151 20
28 U.S.C. § 157 ..... 2, 3, 20, 21
28 U.S.C. § 1331 19
28 U.S.C. § 1332 19
28 U.S.C. § 1334 ..... *passim*
28 U.S.C. § 1367 2

OTHER AUTHORITIES

Ahart, Alan M., *Enforcing Nondischargeable Money Judgments: The Bankruptcy Courts' Dubious Jurisdiction*, 74 Am. Bankr. L.J. 115 (2000) 14, 15
Block-Lieb, Susan, *The Case Against Supplemental Jurisdiction: A Constitutional, Statutory and Policy Analysis*, 62 Fordham L. Rev. 721 (1994) 5, 13, 16, 18
Brubaker, Ralph, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41 Wm. & Mary L. Rev. 743 (2000) 6, 13, 15, 16
Collier on Bankruptcy (Lawrence P. King ed., 15th rev. ed. 2005) 10, 17

TABLE OF AUTHORITIES—Continued

Page

Fruehwald, E. Scott, *The Related To Subject Matter Jurisdiction of Bankruptcy Courts*, 44 Drake L. Rev. 1 (1995) 5

Norton, Jr., William L., *Norton Bankruptcy Law & Practice* 2d (2005) 6, 14

PETITION FOR WRIT OF CERTIORARI

IN THE

Supreme Court of the United States

No. 05-

ROBERT SASSON,

Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert Sasson respectfully petitions this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS AND JUDGMENT BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, affirming the judgment of the Bankruptcy Appellate Panel, is reported at 424 F.3d 864 (9th Cir. 2005) and is reproduced at App. 1a–18a. The order of the Court of Appeals denying rehearing and rehearing *en banc* is not reported and is reproduced at App. 19a. The opinion of the Ninth Circuit Bankruptcy Appellate Panel, affirming the judgment of the bankruptcy court, is unreported and is reproduced at App. 21a–42a. The order of the United States Bankruptcy Court for the Northern District of California is

unreported and is reproduced at App. 53a-54a. The hearing in which the bankruptcy court indicated it would deny petitioner's motion to vacate is reproduced at App. 43a–51a.

JURISDICTION

The opinion of the court of appeals was issued on August 25, 2005, and subsequently amended on September 13, 2005. Petitioner filed a timely petition for rehearing or rehearing *en banc* on September 8, 2005, which the court of appeals denied on November 10, 2005. By order dated January 27, 2006, Justice O'Connor granted petitioner's application (05-A-686) to extend the time to file this petition for certiorari through and including March 10, 2006. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 523(a)(6) of title 11, United States Code (the "Bankruptcy Code") provides: "A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt— . . . . (6) for willful and malicious injury by the debtor to another entity or to the property of another entity."

Section 157(a) of title 28, United States Code provides: "Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district."

Section 1334(b) of title 28, United States Code provides: "Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to a case under title 11."

Section 1367(a) of title 28, United States Code provides: "Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over

all other claims that are so related to the claims in the action within such original jurisdiction that they form a part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."

INTRODUCTION

This case presents a basic question of bankruptcy jurisdiction that has long divided the courts of appeals: whether the bankruptcy jurisdiction statute's specific grant of jurisdiction over matters "related to" a bankruptcy case precludes bankruptcy courts from invoking the broader grant of supplemental jurisdiction provided by the general federal supplemental jurisdiction statute.

Section 1334(b) of title 28, which governs bankruptcy jurisdiction, grants district courts jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases under title 11." This Court has made clear that a case is within the "related to" jurisdiction of section 1334 only if the outcome of the proceeding might have an effect on the bankruptcy estate. *See Celotex Corp.* v. *Edwards*, 514 U.S. 300, 308 & n.6 (1995) (citing *Pacor, Inc.* v. *Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). Section 157(a), in turn, provides that district courts may refer all proceedings that fall within the district court's section 1334(b) jurisdictional grant to "the bankruptcy judges for the district." 28 U.S.C. § 157(a).

Section 1367(a) of title 28 grants the district courts "supplemental jurisdiction," previously described as "pendent" or "ancillary" jurisdiction. "[I]n any civil action of which the district courts have original jurisdiction," section 1367 grants the district courts jurisdiction over "claims that are so related to claims in the action within [the] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." This Court has explained that this "supplemental jurisdiction" extends to the limit of the Article III power, permitting district courts to hear any claim that "arise[s] out of the same common nucleus of operative facts" as a claim over

which there is another source of federal jurisdiction. *See Jinks* v. *Richland County, S.C.*, 538 U.S. 456, 463 (2003); *Raygor* v. *Regents of the Univ. of Minn.*, 534 U.S. 533, 539 (2002); *Finley* v. *United States*, 490 U.S. 545, 549 (1989); *United Mine Workers of Am.* v. *Gibbs*, 383 U.S. 715, 725 (1966).

The intersection of these two statutes has given rise to the question whether a bankruptcy court may exercise jurisdiction over a claim that cannot have any effect on the bankruptcy estate (such that it is excluded from section 1334(b)'s grant of jurisdiction over matters "related to" the bankruptcy case), but that arises out of the same common nucleus of operative facts as another claim that is within section 1334(b)'s bankruptcy jurisdiction (such that it is "related to" a bankruptcy claim within the meaning of section 1367(a)). Put another way, does the specific grant of "related to" jurisdiction in section 1334(b) preclude the invocation of the general section 1367(a) supplemental jurisdiction over "related" claims where "original" federal jurisdiction is grounded in bankruptcy? This question has sharply divided the federal courts of appeals.

The Ninth Circuit below, following circuit precedent, took the broad view of bankruptcy jurisdiction and held that bankruptcy courts may exercise supplemental jurisdiction under section 1367. The bankruptcy courts, the Ninth Circuit reasoned, have jurisdiction over all state-law claims that are "so related to claims in the [bankruptcy proceeding] . . . that they form part of the same case or controversy." Pet. App. 6a (quoting *Montana* v. *Goldin* (*In re Pegasus Gold Corp.*), 394 F.3d 1189, 1195 (9th Cir. 2005)). More specifically, the Ninth Circuit held in the decision below that "the bankruptcy court's 'related to' jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367." *Id.*

The Second Circuit follows the same rule. *See Klein* v. *Civale & Trovato, Inc.* (*In re Lionel Corp.*), 29 F.3d 88, 92 (2d Cir. 1994) ("The bankruptcy court had jurisdiction over the Owners' claims against CTI under principles of supplemental jurisdiction. *See* 28 U.S.C. § 1367.").

By contrast, the Third, Fifth, Seventh and Eleventh Circuits have held that bankruptcy courts may not exercise supplemental jurisdiction. As the Fifth Circuit has explained: "Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and the exercise of ancillary and pendent jurisdiction could subsume the more restrictive 'relate[d] to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous." *Walker* v. *Cadle Co.* (*In re Walker*), 51 F.3d 562, 573 (5th Cir. 1995) (internal quotation omitted).[1]

Leading commentators have, for more than a decade, pointed to this division of authority in the lower federal courts. *See* E. Scott Fruehwald, *The Related To Subject Matter Jurisdiction of Bankruptcy Courts*, 44 Drake L. Rev. 1, 27-28 (1995) ("courts are split over whether statutory supplemental jurisdiction applies to bankruptcy courts"); Susan Block-Lieb, *The Case Against Supplemental Jurisdiction:*

---

[1] *See also Bass* v. *Denney (In re Bass)*, 171 F.3d 1016, 1024 (5th Cir. 1999) (relying on *Walker* for the proposition that "bankruptcy courts may not exercise supplemental jurisdiction"); *Bobroff* v. *Continental Bank (In re Bobroff)*, 766 F.2d 797, 802 (3d Cir. 1985) ("[T]he mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of [the present section 1334(b)]. Judicial economy itself does not justify federal jurisdiction." (quotations omitted)); *Torkelsen* v. *Maggio* (*In re Guild & Gallery Plus, Inc.*), 72 F.3d 1171, 1181 (3d Cir. 1996) (citing *Bobroff* as "rejecting argument that 'related to' jurisdiction is intended to mirror the principle of pendent jurisdiction"); *Wisconsin Dep't of Indus., Labor & Human Relations* v. *Marine Bank Monroe* (*In re Kubly*), 818 F.2d 643, 645 (7th Cir. 1987) (rejecting the proposition that it is sufficient for there to be "a logical relationship or 'nexus' between a proceeding and a bankruptcy case" because "the 'related to' jurisdiction encompasses only disputes that affect the payments to the bankrupt's other creditors or the administration of the bankrupt's estate"); *Miller* v. *Kemira* (*In re Lemco Gypsum, Inc.*), 910 F.2d 784, 789 (11th Cir. 1990) ("Overlap between the bankrupt's affairs and another dispute is insufficient unless its resolution also affects the bankrupt's estate or the allocation of assets among creditors. The mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of § 1334(b). Judicial economy itself does not justify federal jurisdiction." (footnotes omitted)).

A Constitutional, Statutory and Policy Analysis, 62 Fordham L. Rev. 721, 756 (1994) ("the majority of courts that have addressed the issue have concluded that . . . bankruptcy courts are empowered to exercise supplemental bankruptcy jurisdiction"); Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41 Wm. & Mary L. Rev. 743, 928 (2000) ("many courts have concluded more recently that bankruptcy courts have no 'supplemental' bankruptcy jurisdiction whatsoever"); *see also* William L. Norton, Jr., 1 *Norton Bankr. Law & Practice* 2d § 4:70 (2005) (noting both that "it has been held that § 1367(a) may be invoked as a basis for the exercise of jurisdiction by the bankruptcy court" and that "[u]nder developing case law, it appears that a bankruptcy court cannot exercise supplemental jurisdiction").

This case is a particularly appropriate vehicle to address the question whether bankruptcy courts may exercise supplemental jurisdiction, because it presents that question in the context of a recurring procedural dilemma for bankruptcy courts. Section 523(a) of the Bankruptcy Code sets out a number of exceptions to the general rule that preexisting debts are dischargeable in bankruptcy and permits a creditor to obtain a declaration that such a debt is nondischargeable. *See* 11 U.S.C. § 523(a), (c). Such an action by a creditor "arises under" the Bankruptcy Code, 28 U.S.C. § 1334(b), and thus is plainly within the bankruptcy court's jurisdiction.

In the course of adjudicating a proceeding seeking a declaration of nondischargeability, however, bankruptcy courts are often faced with the question whether they may also enter judgment on the underlying nondischargeable debt—generally, as here, an action arising solely under state law. That underlying state-law action neither "arises under" the Bankruptcy Code nor "arises in" a bankruptcy case. Nor is a claim seeking a judgment on a nondischargeable state-law debt "related to" the bankruptcy case within the meaning of section 1334(b). A proceeding seeking a judgment on a nondischargeable debt is a suit against the debtor personally, not against the estate, and a judgment on such a debt is

enforceable only against the debtor himself and those of his assets that fall outside the bankruptcy estate. By definition, therefore, the resolution of a dispute regarding a nondischargeable debt can have no effect on the bankruptcy estate—the touchstone of the "related to" jurisdiction under section 1334(b).

Instead, as the decision below reflects, the only possible rationale for permitting bankruptcy courts to exercise jurisdiction over such nondischargeable debts is that the claim falls within the supplemental jurisdiction because the underlying state-law action arises out of the same set of facts as the nondischargeability proceeding. Accordingly, this recurring procedural scenario starkly poses the question presented here—whether bankruptcy courts may exercise supplemental jurisdiction.

The specific question whether bankruptcy courts have jurisdiction to enter judgment on a nondischargeable debt has itself divided the lower federal courts. Although the courts of appeals to address the issue have held that bankruptcy courts do have such jurisdiction, numerous bankruptcy and district courts—along with every scholarly commentator to address the issue—have concluded that an action on a nondischargeable debt is not within section 1334(b)'s grant of jurisdiction. Because granting certiorari in this case would resolve this recurring procedural problem of substantial practical importance, this would be a particularly appropriate case in which to grant certiorari to resolve the entrenched and longstanding circuit split on the question whether bankruptcy courts may exercise section 1367's supplemental jurisdiction.

STATEMENT OF THE CASE

1. In March 1989, respondent Norman Sokoloff obtained a judgment in the Superior Court of California against petitioner Robert Sasson for $120,000, including prejudgment interest, for failure to pay on a promissory note.

Sasson obtained from the California state court a stay of that judgment pending appeal, on the condition that Sasson not dissipate any assets outside the ordinary course of business. Sasson, however, purchased property and paid debts that he owed to other creditors.

2. In May 1989, Sasson filed a voluntary bankruptcy petition under Chapter 7 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Northern District of California. In connection with that bankruptcy, Sokoloff brought an adversary proceeding against Sasson, seeking a declaration that the debt Sasson owed to Sokoloff was nondischargeable. Specifically, Sokoloff alleged that Sasson engaged in wrongful conduct designed to defraud him, both before and after the debt was reduced to judgment. Accordingly, Sokoloff sought a declaration that the debt on the promissory note was nondischargeable in bankruptcy because, *inter alia*, it was a debt for "willful and malicious injury." 11 U.S.C. § 523(a)(6). By order dated June 13, 1991, the bankruptcy court found in favor of Sokoloff and entered judgment declaring that Sokoloff's claim against Sasson was nondischargeable.

In addition to the declaration that the debt was nondischargeable, Sokoloff also asked the bankruptcy court to enter judgment against Sasson on the underlying state-law claim. The bankruptcy court did so, entering judgment in Sokoloff's favor in the amount of $148,142.46, which included post-judgment interest. The bankruptcy case was thereafter closed. Sokoloff then sought to collect on the bankruptcy court judgment, but was unable to do so.

3. In April 2002, the bankruptcy court granted a motion by Sasson to reopen his bankruptcy case. Sasson thereupon filed a motion, pursuant to Fed. R. Civ. P. 60(b), to vacate the 1991 judgment. He argued that the 1991 judgment was void *ab initio* because the bankruptcy court never had subject-matter jurisdiction over the underlying state-law claim against him. The bankruptcy court denied the motion. On appeal, the Bankruptcy Appellate Panel of the Ninth Circuit ("BAP") affirmed.

4. The Ninth Circuit affirmed the BAP's ruling. In finding that the bankruptcy court had subject-matter jurisdiction over the state-law claim for damages, the Ninth Circuit did not suggest that the resolution of that dispute might have any effect on the bankruptcy estate, which is the standard test for determining the existence of "related to" jurisdiction. *See Celotex Corp.* v. *Edwards*, 514 U.S. 300, 308 & n.6 (1995). Instead, the court of appeals rested its determination on its conclusion that section 1334(b)'s grant of "related to" jurisdiction also includes section 1367's grant of supplemental jurisdiction. "[A]t present, the bankruptcy court's 'related to' jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367 'over all other claims that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.'" Pet. App. 6a (citation omitted; second brackets in original).

As further support for its holding, the Ninth Circuit noted that it had previously held, in *Cowen* v. *Kennedy (In re Kennedy)*, 108 F.3d 1015, 1016 (9th Cir. 1997), that bankruptcy courts have "'jurisdiction to enter a monetary judgment on a disputed state law claim in the course of making a determination that a debt is nondischargeable.'" Pet. App. 4a. The court also stated that Congress had expressly provided the bankruptcy courts with that power under the Bankruptcy Act of 1898 (*id.* at 4a) pointed to the broad equitable powers enjoyed by bankruptcy courts (*id.* at 5a) and cited the decisions of various other courts of appeals that have allowed bankruptcy courts to enter money judgments on an underlying claim as ancillary to their power to resolve a complaint of nondischargeability (*id.* at 7a (citing cases)).[2]

---

[2] The court of appeals also rejected Sasson's argument that principles of *res judicata* should have prevented the bankruptcy court from entering judgment on a claim that was previously litigated to judgment in state court, concluding that on the facts of this case the bankruptcy court did not abuse its discretion in its exercise of its "inherent equitable power to fashion relief." Pet. App. 13a.

REASONS FOR GRANTING THE WRIT

The courts of appeals are divided on the question whether Congress's grant of "related to" jurisdiction in section 1334(b)—which extends only to actions that may have an effect on the bankruptcy estate—precludes bankruptcy courts from exercising the broader supplemental jurisdiction over "related" claims that section 1367(a) grants to district courts in civil actions. This case presents that issue in a context that involves a recurring procedural dilemma for the bankruptcy courts. In considering whether a particular debt is nondischargeable, bankruptcy courts are commonly asked to enter judgment in favor of the creditor on that underlying debt—typically a state-law claim. As the decision below reflects, the exercise of jurisdiction over such a claim—which is outside section 1334's bankruptcy jurisdiction—raises the question whether bankruptcy courts may exercise supplemental jurisdiction under section 1367. Accordingly, this case is a particularly appropriate vehicle in which to resolve the circuit split on the issue whether bankruptcy courts may exercise section 1367's supplemental jurisdiction.

I. THE COURTS OF APPEALS HAVE DIVIDED ON WHETHER BANKRUPTCY COURTS MAY EXERCISE SUPPLEMENTAL JURISDICTION UNDER SECTION 1367

The current grant of jurisdiction to the federal district courts over bankruptcy matters was enacted as part of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, and is codified at section 1334 of title 28. As relevant here, section 1334(b) grants the district courts "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).[3]

---

[3] Proceedings "arising under title 11" are those in which the cause of action is created by the Bankruptcy Code, such as a proceeding seeking a declaration that a particular debt is nondischargeable under section 523(a) of the Bankruptcy Code. *See*, 1 *Collier on Bankruptcy* ¶ 3.01[4][c][i] (Lawrence P. King ed., 15th rev. ed. 2005). Proceedings "arising in . . . cases under title 11" are matters that do not originate in an express right or cause of action under the Bankruptcy Code, but can arise only in a bankruptcy case. *See id.* ¶ 3.01[4][c][iv]. Finally, the grant of jurisdiction

There is a deep and longstanding circuit split on the question whether the grant of "related to" jurisdiction in section 1334 precludes the bankruptcy courts from exercising supplemental jurisdiction under section 1367. The Third, Fifth, Seventh, and Eleventh Circuits have held that bankruptcy courts cannot exercise section 1367's supplemental jurisdiction. *See supra* p. 5 n.1. As the Fifth Circuit reasoned: "Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and the exercise of ancillary and pendent jurisdiction could subsume the more restrictive 'relate[d] to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous." *Walker* v. *Cadle Co.* (*In re Walker*), 51 F.3d 562, 573 (5th Cir. 1995) (internal quotation omitted); *see also Bass* v. *Denney (In re Bass)*, 171 F.3d 1016, 1024 (5th Cir. 1999) (same). The Third, Seventh, and Eleventh Circuits have reached the same conclusion. *See Bobroff* v. *Continental Bank* (*In re Bobroff*), 766 F.2d 797, 802 (3d Cir. 1985); *Wisconsin Dep't of Indus., Labor & Human Relations* v. *Marine Bank Monroe* (*In re Kubly*), 818 F.2d 643, 645 (7th Cir. 1987); *Miller* v. *Kemira* (*In re Lemco Gypsum, Inc.*), 910 F.2d 784, 789 (11th Cir. 1990).

By contrast, the Second and Ninth Circuits have permitted bankruptcy courts to exercise the broader form of supplemental jurisdiction granted to the district courts by

---

over proceedings "related to cases under title 11" empowers district courts to adjudicate disputes that exist independently of the bankruptcy case. The touchstone of "related to" jurisdiction is whether the resolution of the dispute could affect the bankruptcy estate. *See Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 54 (1982) (plurality) (explaining that the "related to" provision "empowers bankruptcy courts to entertain a wide variety of cases involving claims that may affect the property of the estate"); *Celotex, Corp.* v. *Edwards*, 514 U.S. 300, 308 & n.6 (1995) (noting that nine courts of appeals had adopted the Third Circuit's standard for "related-to" jurisdiction, articulated in *Pacor, Inc.* v. *Higgins*, 743 F.2d 984 (3d Cir. 1984), under which the test is "whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy," while two other courts of appeals had adopted "slightly different" formulations that nevertheless focus on the "effect on the bankruptcy estate").

section 1367. As the Ninth Circuit explained in the decision below: "at present, the bankruptcy court's 'related to' jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367." Pet. App. 5a; *see also Klein* v. *Civale & Trovato, Inc. (In re Lionel Corp.)*, 29 F.3d 88, 92 (2d Cir. 1994) ("The bankruptcy court had jurisdiction over the Owners' claims against CTI under principles of supplemental jurisdiction. *See* 28 U.S.C. § 1367.").[4]

The division in the district courts and bankruptcy courts is equally pronounced, with more than a dozen cases on each side of the issue.[5] In addition, the disagreement among the

---

[4] *See also Montana* v. *Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1195 (9th Cir. 2005); *Security Farms* v. *International Bhd. of Teamsters*, 124 F.3d 999, 1008 & n.5 (9th Cir. 1997) (permitting district court to exercise 1367 jurisdiction as supplemental to section 1334 jurisdiction).

[5] Permitting or speaking favorably of the exercise of section 1367 jurisdiction as supplemental to jurisdiction under section 1334(b): *McCarthy* v. *Radcliffe (In re Radcliffe)*, 317 B.R. 581, 590 (Bankr. D. Conn. 2004); *Pierce* v. *Conseco Fin. Serv. Corp. (In re Lockridge)*, 303 B.R. 449, 454-456 (Bankr. D. Ariz. 2003); *Masterwear Corp.* v. *Rubin, Baum, Levin, Constant & Friedman (In re Masterwear Corp.)*, 241 B.R. 511, 517 n.6 (Bankr. S.D.N.Y. 1999); *Official Comm. of Unsecured Creditors* v. *Riviera Med. Dev. Corp. (In re South Bay Med. Assoc.)*, 184 B.R. 963, 970 (Bankr. C.D. Cal. 1995); *Official Committee of Unsecured Creditors* v. *Ganz (In re Summit Airlines, Inc.)*, 160 B.R. 911, 923 (Bankr. E.D. Pa. 1993); *Jones* v. *Woody (In re W.J. Servs., Inc.)*, 139 B.R. 824, 826 (Bankr. S.D. Tex. 1992); *Goger* v. *Merchants Bank of Atlanta (In re Feifer Indus.)*, 141 B.R. 450, 452 (Bankr. N.D. Ga. 1991); *Hawkins* v. *Eads (In re Eads)*, 135 B.R. 387, 393-397 (Bankr. E.D. Cal. 1991); *Kinney* v. *Higher Educ. Assistance Found. (In re Kinney)*, 114 B.R. 670, 672 (Bankr. D. Neb. 1990); *Dechert Price & Rhoads* v. *Direct Satellite Commc'ns, Inc. (In re Direct Satellite Commc'ns, Inc.)*, 91 B.R. 5, 6 (Bankr. E.D. Pa. 1988); *Aerni* v. *Columbus Fed. Sav. (In re Aerni)*, 86 B.R. 203, 207 (Bankr. D. Neb. 1988); *Petrolia Corp.* v. *Elam (In re Petrolia Corp.)*, 79 B.R. 686, 690-695 (Bankr. E.D. Mich. 1987); *Neill* v. *Borreson (In re John Peterson Motors Inc.)*, 56 B.R. 588, 596 (Bankr. D. Minn. 1986); *Providers Fid. Life Ins. Co.* v. *Tidewater Group, Inc. (In re Tidewater Group, Inc.)*, 63 B.R. 670, 673 (Bankr. N.D. Ga. 1986); *Total Petroleum, Inc.* v. *Coral Petroleum, Inc. (In re Coral Petroleum, Inc.)*, 62 B.R. 699, 708 (Bankr. S.D. Tex. 1986); *In re Wood*, 52 B.R. 513, 522-524 (Bankr. N.D. Ala. 1985); *Cook* v. *Commodity Credit Corp. (In re Earl Roggenbuck Farms, Inc.)*, 51 B.R. 913, 925-926 (Bankr. E.D. Mich. 1985).

courts on this issue has received a great deal of scholarly attention. *See* Susan Block-Lieb, *The Case Against Supplemental Jurisdiction: A Constitutional, Statutory and Policy Analysis*, 62 Fordham L. Rev. 721, 756 (1994) ("the majority of courts that have addressed the issue have concluded that . . . bankruptcy courts are empowered to exercise supplemental bankruptcy jurisdiction"); Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41

Rejecting or criticizing the exercise of such jurisdiction: *Henneghan* v. *Columbia Gas of Va., Inc. (In re Henneghan)*, 2005 WL 2267185, at *4-5 (Bankr. E.D. Va. June 22, 2005); *Securities Investor Prot. Corp.* v. *Murphy (In re Selheimer & Co.)*, 319 B.R. 384, 390 (Bankr. E.D. Va. 2005); *Singer* v. *Adamson (In re Adamson)*, 334 B.R. 1, 12 (Bankr. D. Mass. 2005); *Liquidating Trust* v. *Carramore Ltd. (In re Ha-Lo Indus., Inc.)*, 330 B.R. 663, 672-673 (Bankr. N.D. Ill. 2005); *Banc of Am. Inv. Servs., Inc.* v. *Fraiberg (In re Conseco)*, 305 B.R. 281, 285-287 (Bankr. N.D. Ill. 2004); *Doctors Hosp. of Hyde Park, Inc.* v. *Desnick (In re Doctors Hosp. of Hyde Park, Inc.)*, 308 B.R. 311, 318 (Bankr. N.D. Ill. 2004); *Porter* v. *NationsCredit Consumer Disc. Co. (In re Porter)*, 295 B.R. 529, 541-542 (Bankr. E.D. Pa. 2003); *Steele* v. *Ocwen Fed. Bank (In re Steele)*, 258 B.R. 319, 322 (Bankr. D.N.H. 2001); *McGlynn* v. *Credit Store, Inc.*, 234 B.R. 576, 584 (D.R.I. 1999); *Simmons* v. *Ford Motor Credit Co. (In re Simmons)*, 224 B.R. 879, 886 (N.D. Ill. 1998); *Davis* v. *Warren (In re Davis)*, 216 B.R. 898, 902 (Bankr. N.D. Ga. 1997); *Simmons* v. *Johnson, Curney & Fields, P.C. (In re Simmons)*, 205 B.R. 834, 845 (Bankr. W.D. Tex. 1997); *First Omni Bank* v. *Thrall (In re Thrall)*, 196 B.R. 959, 968-971 & n.8 (Bankr. D. Colo. 1996); *Romar Int'l Ga., Inc.* v. *SouthTrust Bank of Ala. (In re Romar Int'l Ga., Inc.)*, 198 B.R. 401, 407 (Bankr. M.D. Ga. 1996); *Adams* v. *Prudential Secs., Inc. (In re Found. for New Era Philanthropy)*, 201 B.R. 382, 397-398 & n.16 (Bankr. E.D. Pa. 1996); *Goldstein* v. *Marine Midland Bank (In re Goldstein)*, 201 B.R. 1, 6-7 (Bankr. D. Me. 1996); *Boyajian* v. *DeLuca (In re Remington Dev. Group, Inc.)*, 180 B.R. 365, 375 (Bankr. D.R.I. 1995); *Halvajian* v. *Bank of New York*, 191 B.R. 56, 58-59 (D.N.J. 1995); *Wilcox* v. *Houghton (In re Houghton)*, 164 B.R. 146, 148 (Bankr. W.D. Wash. 1994); *Fisher* v. *Federal Nat'l Mortgage Ass'n (In re Fisher)*, 151 B.R. 895, 898-899 (Bankr. N.D. Ill. 1993); *DaSilva* v. *American Sav.*, 145 B.R. 9, 12 (S.D. Tex. 1992); *SouthTrust Bank* v. *Alpha Steel Co., Inc. (In re Alpha Steel Co., Inc.)*, 142 B.R. 465, 470-471 (M.D. Ala. 1992); *Official Creditors' Comm. of Prods. Liability & Pers. Injury Claimants* v. *International Ins. Co. (In re Pettibone Corp.)*, 135 B.R. 847, 851-852 (Bankr. N.D. Ill. 1992); *Maislin Indus., U.S., Inc.* v. *Certified Brokerage Sys., Inc. (In re Maislin Ind.)*, 75 B.R. 170, 172 (Bankr. E.D. Mich. 1987).

Wm. & Mary L. Rev. 743, 928 (2000) ("many courts have concluded more recently that bankruptcy courts have no 'supplemental' bankruptcy jurisdiction whatsoever"); *see also* William L. Norton, Jr., 1 *Norton Bankr. Law & Practice* 2d, § 4:70 (2005) (noting both that "it has been held that § 1367(a) may be invoked as a basis for the exercise of jurisdiction by the bankruptcy court" and that "[u]nder developing case law, it appears that a bankruptcy court cannot exercise supplemental jurisdiction"). This Court should grant certiorari to resolve this entrenched division of authority among the courts of appeals.

II. THIS CASE IS A PARTICULARLY APPROPRIATE VEHICLE TO RESOLVE THE CIRCUIT SPLIT BECAUSE IT INVOLVES A RECURRING PRACTICAL ISSUE

The supplemental jurisdiction question arises here in the context of a nondischargeability action. The Bankruptcy Code makes certain types of debts nondischargeable, meaning that the creditor can continue to sue the debtor to recover the debt after the bankruptcy, notwithstanding the debtor's discharge. As relevant here, a debt for "willful and malicious injury" is nondischargeable. 11 U.S.C. § 523(a)(6). Determinations as to the dischargeability of a particular debt are commonly made by way of a proceeding for a declaratory judgment brought in the bankruptcy court, *see id.* § 523(c), a proceeding that "arises under" Title 11 and thus falls within the jurisdiction granted by section 1334(b).

In connection with such a declaratory judgment proceeding, creditors routinely seek to use the bankruptcy court forum also to obtain a judgment against the debtor on the underlying claim—typically a claim sounding in tort or contract and arising under state law. *See* Alan M. Ahart, *Enforcing Nondischargeable Money Judgments: The Bankruptcy Courts' Dubious Jurisdiction*, 74 Am. Bankr. L.J. 115, 116 (2000) (noting that "[m]ost" nondischargeability actions "not only ask the court to except particular debt(s) from discharge, but also to enter a money judgment against the debtor for the amount of the debts").

This dispute over the underlying nondischargeable debt does not fall within the "arising under" or "arising in" juris-

diction conferred by section 1334. Nor is it included within the "related to" jurisdiction, because such an action runs against the debtor personally, not against the estate. A judgment on such a debt can be enforced only against the debtor himself and those of his assets (such as post-bankruptcy earnings) that fall outside the bankruptcy estate. *See* 11 U.S.C. § 541. The resolution of a dispute regarding a nondischargeable debt can thus have no effect on the bankruptcy estate—the touchstone of the "related to" jurisdiction under section 1334(b). Indeed, many bankruptcy courts that have considered the question whether an action on a nondischargeable debt can come within the "related to" jurisdiction have held that it cannot, for precisely this reason.[6]

Like the Ninth Circuit, the Fourth, Sixth, and Eighth Circuits have nevertheless held that bankruptcy courts may enter judgment on a nondischargeable debt. In support of that conclusion, those courts have not held that such a debt could have any effect on the bankruptcy estate, but have instead relied on the factual nexus between the nondischargeability proceeding itself and the underlying state-law claim, and the supposed judicial economy arising from deciding both matters together—the classic rationale for the exercise of supplemental jurisdiction.[7] That is, those courts' holdings

---

[6] *See, e.g., ATS Cases, Inc.* v. *Belli (In re Belli)*, 2005 WL 3263925, at *1 & n.3 (Bankr. D. Mass. June 29, 2005); *Cotten* v. *Cotten (In re Cotten)*, 318 B.R. 583, 587 & n.2 (Bankr. W.D. Okla. 2004); *American Express Centurion Bank* v. *Losanno (In re Losanno)*, 291 B.R. 1, 1 (Bankr. D. Mass. 2003); *Porter Capital Corp.* v. *Hamilton (In re Hamilton)*, 282 B.R. 22, 23-26 (Bankr. W.D. Okla. 2002); *Thrall* v. *First Omni Bank (In re Thrall)*, 196 B.R. 959, 969 (Bankr. D. Colo. 1996); *Barrows* v. *Illinois Student Assistance Comm'n (In re Barrows)*, 182 B.R. 640, 653 (Bankr. D.N.H. 1994). Scholarly commentators have agreed. *See* Brubaker, 41 Wm. & Mary L. Rev. at 916-918; Ahart, 74 Am. Bankr. L. J. at 116.

[7] *See Longo* v. *McLaren (In re McLaren)*, 3 F.3d 958, 966 (6th Cir. 1993) ("allowing the bankruptcy judge to settle both the dischargeability of the debt and the amount of the money judgment accords with the rule generally followed by courts of equity that having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief") (internal quotations and citation omitted); *Abramowitz* v. *Palmer*, 999 F.2d 1274, 1279 (8th Cir. 1993)

necessarily rest on the conclusion that bankruptcy courts may exercise supplemental jurisdiction—a conclusion made explicit in the Ninth Circuit's decision below, which opined that "the bankruptcy court's 'related to' jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367." Pet. App. 6a.[8]

("[t]he small step the bankruptcy court took between determining Toni Palmer's liability for fraud and entering a money judgment against Toni Palmer as a result of that fraud was a logical exercise of related to jurisdiction"); *Hall* v. *Davenport*, 1996 WL 34674, 76 F.3d 372 (4th Cir. 1996) (unpublished) ("Nor is there reason to doubt that bankruptcy courts have the authority to enter money judgments. . . . Surely to be nondischargeable, the court must have found a debt to be due and owing."); *accord Lang* v. *Lang (In re Lang)*, 293 B.R. 501, 516-517 & nn.17-19 (BAP 10th Cir. 2003); *Valencia* v. *Lucero (In re Valencia)*, 213 B.R. 594, 596 (D. Colo. 1997); *Snyder* v. *Devitt (In re Devitt)*, 126 B.R. 212, 215-216 (Bankr. D. Md. 1991); *Builders Steel Co.* v. *Heidenreich (In re Heidenreich)*, 216 B.R. 61, 63 (Bankr. N.D. Okla. 1998); *Baker* v. *Friedman (In re Friedman)*, 300 B.R. 149, 150-151 (Bankr. D. Mass. 2003); *Harris* v. *United States Fire Ins. Co.*, 162 B.R. 466, 468 (E.D. Va. 1994); *Hi-Qual Roofing & Siding Materials, Inc.* v. *Ridsdale (In re Ridsdale)*, 286 B.R. 238, 239 (Bankr. W.D.N.Y. 2002) (all exercising jurisdiction over underlying claims).

The Seventh Circuit, which held in *Wisconsin Department of Industry, Labor & Human Relations* v. *Marine Bank Monroe (In re Kubly)*, 818 F.2d 643, 645-646 (7th Cir. 1987), that bankruptcy courts may not exercise supplemental jurisdiction, reached a contrary result in *N.I.S. Corp.* v. *Hallahan (In re Hallahan)*, 936 F.2d 1496, 1508 (7th Cir. 1991) ("allowing the bankruptcy judge to settle both the dischargeability of the debt and the amount of the money judgment accords with the rule generally followed by courts of equity that having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief"). The *Hallahan* decision, however, neither cites to nor mentions the prior inconsistent decision in *Kubly*.

[8] Commentators have similarly recognized that bankruptcy courts that exercise jurisdiction over nondischargeable debts are exercising supplemental jurisdiction. *See* Brubaker, 41 Wm. & Mary L. Rev. at 918-919 (the analysis of the cases that have found jurisdiction over nondischargeable debts is "quite conspicuously a . . . supplemental approach to the federal bankruptcy jurisdiction"); Block-Lieb, 62 Fordham L. Rev. at 816-817 (stating that a proceeding objecting to discharge arises under title 11 and further stating that such a proceeding will involve "a common nucleus of operative fact" between the nondischargeability claim and a claim seeking a judgment on the underlying debt).

The Ninth Circuit's judgment necessarily rests on the conclusion that the bankruptcy court may exercise supplemental jurisdiction. As the Ninth Circuit observed, the 1970 amendments to the Bankruptcy Act of 1898 permitted bankruptcy courts to enter judgments on nondischargeable debts. Pet. App. 4a. But that prior statutory scheme was replaced entirely by the 1978 Bankruptcy Code, which included a wholesale revision of the provisions governing the jurisdiction of the bankruptcy courts. Thus, Congress carefully considered and completely overhauled the entire bankruptcy jurisdictional scheme and in doing so chose to eliminate the prior grant of jurisdiction to enter judgment on nondischargeable debts.

Nor does section 105 of the Bankruptcy Code, which provides that the court may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," provide an independent basis for the exercise of subject-matter jurisdiction. *See* Pet. App. 5a. To the contrary, the law is clear that section 105 cannot expand the bankruptcy court's authority beyond the jurisdiction expressly granted by section 1334. *See, e.g., In re Combustion Eng'g*, 391 F.3d 190, 225 (3d Cir. 2004) ("§ 105 does not provide an independent source of federal subject matter jurisdiction."); *In re Johns-Manville Corp.*, 801 F.2d 60, 63 (2d Cir. 1986) ("Section 105(a) does not, however, broaden the bankruptcy court's jurisdiction, which must be established separately."); 2 *Collier on Bankruptcy* ¶ 105.01[2] (Lawrence P. King ed., 15th rev. ed. 2005) (stating that "if the court ha[s] jurisdiction" then section 105 orders can be "used to protect and further that jurisdiction"); *see also Celotex*, 514 U.S. at 327 (Stevens, J., dissenting) (section 105 "is not an independent source of jurisdiction").

Accordingly, the Ninth Circuit's holding that the bankruptcy court had jurisdiction to enter judgment in Sokoloff's favor on his claim against Sasson rests firmly on its conclusion that the bankruptcy court had supplemental jurisdiction over that claim. Because the circuits are sharply divided on whether the bankruptcy courts may exercise that jurisdiction, this Court should grant certiorari to resolve that issue.

III. THE DECISION BELOW IS INCORRECT

A. The Specific Grant Of "Related To" Bankruptcy Jurisdiction Should Control Over The General Grant Of Supplemental Jurisdiction In Section 1367

Contrary to the reasoning of the Ninth Circuit, section 1334(b)'s specific grant of jurisdiction over proceedings "related to" the bankruptcy case does not "include" section 1367's broader grant of supplemental jurisdiction.

The Ninth Circuit failed to realize that the "related to" jurisdiction conferred by section 1334(b) is itself a form of supplemental jurisdiction. *See, e.g., In re Bass*, 171 F.3d at 1024; *see also* Block-Lieb, 62 Fordham L. Rev. at 779. Its function is to permit courts sitting in bankruptcy to adjudicate claims that would otherwise be outside bankruptcy jurisdiction—including claims that, absent a bankruptcy, could be heard only in state court—when those claims can affect the assets of the bankruptcy estate. "Related to" jurisdiction thus augments the basic grant of power over core bankruptcy matters by permitting the adjudication of claims that fall outside that core, but that impinge on the central concerns of the bankruptcy by affecting the assets available for distribution to creditors.

But "related to" jurisdiction under section 1334(b) is a different—and narrower—kind of supplemental jurisdiction than that granted in section 1367. Because the core concern of bankruptcy is the administration of the bankruptcy estate and the distribution of the estate's assets to creditors, "related to" jurisdiction is limited to claims that affect that function. In other words, "related to" jurisdiction is the form of supplemental jurisdiction that is appropriate to bankruptcy proceedings, which are in essence *in rem* proceedings regarding the bankruptcy estate. *See Central Va. Cmty. College* v. *Katz*, 126 S. Ct. 990, 995 (2006) ("Bankruptcy jurisdiction, at its core, is *in rem*."). "Related to" jurisdiction is jurisdiction over matters "related to" the *res*.

By contrast, section 1367 provides a broader grant of supplemental jurisdiction to district courts adjudicating "civil actions" over all matters that form part of the same

case or controversy as the civil action in question. Translating that grant of jurisdiction into bankruptcy is conceptually problematic, since a bankruptcy case is not analogous to a unitary "civil action." Rather, it is composed of numerous discrete "civil proceedings," which together comprise the "bankruptcy case."

Indeed, Congress made that distinction clear, using different statutory language in the grant of bankruptcy jurisdiction from that used in creating other sources of federal jurisdiction. *Compare* 28 U.S.C. § 1334(b) (granting jurisdiction of "all *civil proceedings* arising under title 11, or arising in or related to cases under title 11") *with id.* § 1331 (granting jurisdiction over "*civil actions* arising under the Constitution, laws or treaties of the United States") *and id.* § 1332 (granting jurisdiction over "all *civil actions* where the matter in controversy exceeds the sum of $75,000" and the diversity requirements are satisfied (all emphases added)).

As interpreted by the Ninth Circuit below, however, section 1367 would grant bankruptcy courts the authority to resolve any matter with a factual nexus to any of the many "proceedings" that make up the bankruptcy case. Such a sweeping grant of supplemental jurisdiction would be far afield from the central purpose of bankruptcy and at odds with the statutory text.

As the Fifth Circuit concluded, Congress's considered choice to make a specific grant of one type of supplemental jurisdiction in bankruptcy—the type that is appropriate given the *in rem* nature of a bankruptcy case—is powerful evidence that Congress did not intend to confer upon bankruptcy courts the far more expansive supplemental jurisdiction that the Ninth Circuit below held was "included" in 1334's grant of "related to" jurisdiction. "Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts," and permitting those courts to exercise the more general supplemental jurisdiction found in section 1367 would render the "more restrictive" grant in section 1334(b) "substantially, if not entirely superfluous." *In re Bass*, 171 F.3d at 1024 (citing *In re Walker*, 51 F.3d at 570-573).

B. Congress Has Provided For Referral To The Bankruptcy Court Only Of The District Court's Section 1334 Jurisdiction—Not Supplemental Jurisdiction Exercised Under Section 1367

Section 157 of title 28—which establishes the relationship between the district court and the bankruptcy courts—confirms that Congress did not intend bankruptcy courts to exercise supplemental jurisdiction.

Section 1367 grants supplemental jurisdiction only to "district courts." Section 1334 likewise grants jurisdiction over bankruptcy cases and proceedings only to the district courts. Section 157, in turn, permits the district courts to refer "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11"—that is to say, those cases and proceedings that are within the section 1334 bankruptcy jurisdiction—"to the bankruptcy judges for the district." 28 U.S.C. § 157(a). Those judges are described by statute as "a unit of the district court to be known as the bankruptcy court for that district." *Id.* § 151.[9]

There is no provision for referring matters within the section 1367 supplemental jurisdiction to the bankruptcy courts. Rather, the only proceedings that may be referred to bankruptcy judges are those enumerated in section 1334(b). 28 U.S.C. § 157(a). That Congress provided no

---

[9] Under the Bankruptcy Reform Act of 1978, all of the jurisdiction granted to the district courts was to be exercised by bankruptcy judges. In *Northern Pipeline*, 458 U.S. 50, this Court invalidated that grant of judicial power to the non-Article III bankruptcy courts. In response, Congress adopted the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, which amended the allocation of authority between the district courts and the bankruptcy courts to ensure that bankruptcy courts could not enter final judgments in matters constitutionally required to be adjudicated by an Article III tribunal, absent parties' consent. Accordingly, when district courts refer matters to the bankruptcy judges that are not "core" bankruptcy matters—those as to which *Northern Pipeline* ensures a right to an Article III tribunal—the bankruptcy judges act essentially as federal magistrates, issuing proposed findings and conclusions that are subject to *de novo* review in the district court. *See* 28 U.S.C. § 157.

mechanism for referring proceedings within the "supplemental jurisdiction" to the bankruptcy judges is strong evidence that it did not intend bankruptcy courts to exercise such jurisdiction.

The Ninth Circuit accordingly erred in holding that the bankruptcy court's "related to" jurisdiction "includes" the supplemental jurisdiction provided in section 1367. This Court should grant the petition for certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID A. BOONE
SUSAN D. SILVEIRA
LAW OFFICES OF DAVID A. BOONE
1611 The Alameda
San Jose, CA 95126
(408) 291-6000

JAMES K. ROBERTS
ROBERTS & ELLIOTT
10 Almaden Boulevard, Suite 500
San Jose, CA 95113
(408) 275-9800

SETH P. WAXMAN
CRAIG GOLDBLATT
Counsel of Record
DANIELLE SPINELLI
WILMER CUTLER PICKERING HALE AND DORR LLP
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

LISA LYNCH
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

MARCH 2006

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-16364

IN RE ROBERT SASSON, *Debtor.*

ROBERT SASSON, *Appellant,*

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN, *Appellee.*

Argued and Submitted Feb. 15, 2005
Filed Aug. 25, 2005
Amended Sept. 13, 2005

Appeal from the Ninth Circuit Bankruptcy Appellate Panel; Perris, Meyers, and Marlar, Bankruptcy Judges, Presiding

BAP No. NC-02-01410-MaMeP

[424 F.3d 864]

[866]

* * *

Before: SIDNEY R. THOMAS, SUSAN P. GRABER, and RICHARD A. PAEZ, Circuit Judges.

THOMAS, Circuit Judge:

In this appeal, we are presented with the question of whether a bankruptcy court has subject matter jurisdiction to enter a money judgment in a nondischargeability adversary proceeding where the underlying debt has been reduced to judgment in state court. We conclude that it may

and affirm the decision of the Ninth Circuit Bankruptcy Appellate Panel ("BAP").

I

In 1988, Sokoloff, as trustee of Camelot Medical Group, Inc., Profit Sharing Plan, obtained a judgment against Sasson on a cross-complaint for breach of a promissory note. A California Superior Court entered judgment against Sasson for $120,000, plus accrued interest and statutory costs.

Before Sokoloff could enforce the judgment, Sasson filed a motion for reconsideration and obtained a stay of enforcement pending determination of the motion for reconsideration. The stay was granted subject to the condition that Sasson "not dissipate any assets except in the normal course of business." While the stay was in place and without informing the court of his actions, Sasson dissipated the majority of his assets through dissolution proceedings with his wife, purchase of a new property, creation of encumbrance on that property and ultimately by payment to other creditors. The court denied Sasson's motion for reconsideration, and Sokoloff recorded an abstract of judgment. At that point, however, the judgment was uncollectible.

Subsequently, Sasson filed a voluntary petition for relief under Chapter 7 of the [867] Bankruptcy Code, 11 U.S.C. §§ 301, 701-784 in the Northern District of California. His bankruptcy schedule did not mention Sasson's recent transfer of assets. Sokoloff then filed a complaint seeking a determination of nondischargeability of the state court judgment under 11 U.S.C. § 523(a)(6) and a denial of discharge under 11 U.S.C. § 727(a)(2).[1] The bankruptcy court rejected

---

[1] Under 11 U.S.C. § 523(a)(6) of the Bankruptcy Code, any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" shall not be dischargeable in bankruptcy. Under 11 U.S.C. § 727(a)(2), a debtor may not obtain a discharge if "the debtor, with intent to hinder, delay, or defraud a creditor ... has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed ... property of the

the § 727(a)(2) claim, but found that Sasson's transfer of assets in violation of the state court stay constituted a willful and malicious injury under § 523(a)(6). The court entered a judgment for $148,142.46 plus costs and accruing interest. Sasson filed an appeal of this decision, but later dismissed it. Subsequently, both Sasson's bankruptcy and the adversary proceeding were closed by the bankruptcy court.

Sokoloff continued to pursue collection remedies in bankruptcy court. Sokoloff filed a notice of the judgment lien and recorded an abstract of judgment. Sokoloff then obtained a Writ of Execution to the United States Marshal and instructed the Marshal to levy on Sasson's wages. Sasson filed a claim of exemption, which the court granted in part.

In 2001, Sokoloff renewed the 1991 Judgment. The bankruptcy court issued an Abstract of Judgment for $239,160.42 on July 9, 2001, which was then recorded. Subsequently, the bankruptcy court granted Sasson's ex-parte motion to reopen his Chapter 7 proceedings for sixty days. Sasson then filed a motion pursuant to Federal Rule of Civil Procedure 60(b) to vacate the 1991 money judgment and to quash the 2001 abstract of judgment. In his motion, Sasson argued that the bankruptcy court lacked subject matter jurisdiction to enter a new federal money judgment and therefore the renewal of judgment and abstract of judgment were void ab initio. The bankruptcy court denied the motion after a hearing. Sasson filed a notice of appeal, which was referred to the BAP. The BAP affirmed the bankruptcy court, holding that the bankruptcy court had jurisdiction both to enter the 1991 judgment of nondischargeability and to determine the amount of damages caused by Sasson's post-judgment conduct. Sokoloff timely appealed the BAP decision.

---

debtor, within one year before the date of the filing of the petition." 11 U.S.C. § 727(a)(2).

We review both the bankruptcy court's and the BAP's interpretation of the Bankruptcy Code de novo. *Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp. (In re Debbie Reynolds Hotel & Casino, Inc.)*, 255 F.3d 1061, 1065 (9th Cir. 2001). We review a ruling on a motion to set aside a judgment as void de novo "because the question of the validity of a judgment is a legal one." *Export Group v. Reef Indus.*, 54 F.3d 1466, 1469 (9th Cir. 1995). We review the scope of the exercise of equitable power de novo, *Graves v. Myrvang (In re Myrvang)*, 232 F.3d 1116, 1124 (9th Cir. 2000), and the exercise of equitable power for an abuse of discretion, *id.* at 1121.

II

The bankruptcy court had jurisdiction to enter a money judgment in the adversary proceeding. We have long held that "the Bankruptcy Court has jurisdiction to enter [868] a monetary judgment on a disputed state law claim in the course of making a determination that a debt is nondischargeable." *Cowen v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1016 (9th Cir. 1997).

A

Our holding in *Kennedy* was firmly grounded. Under the original 1898 Bankruptcy Act, Pub. L. No. 55-171, 30 Stat. 544 (repealed 1978) (as amended through date of repeal) ("1898 Bankruptcy Act"), bankruptcy courts were considered to have equitable jurisdiction to issue orders in aid of a nondischargeability determination. *Local Loan Co. v. Hunt*, 292 U.S. 234, 240 (1934); *see also Pepper v. Litton*, 308 U.S. 295, 304 (1939) ("[F]or many purposes courts of bankruptcy are essentially courts of equity, and their proceedings inherently proceedings in equity." (internal quotation marks omitted)).

In 1970, Congress codified the power of bankruptcy courts, in the exercise of their power to declare debts nondischargeable, to "determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof." 1898 Bankruptcy Act § 17(c)(3). When Con-

gress enacted the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 ("Bankruptcy Code" or "Code"), Congress removed specific jurisdictional language in favor of a general broad jurisdictional grant. However, in doing so, it clearly intended to incorporate the specific pre-Code jurisdiction of the bankruptcy courts.[2] In addition, the Bankruptcy Code specifically provides that:

> *The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.* No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a) (emphasis added). Thus, the bankruptcy court clearly has the power under the Bankruptcy Code to determine whether a debt is nondischargeable, to "determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof," and to "issue any order, process, or judgment that is necessary or appropriate in carrying out" the order of nondischargeability

In addition to continuation of the bankruptcy court's pre-Code jurisdiction and the specific grant of new powers, the Bankruptcy Code provided for the exercise of "original but not exclusive jurisdiction of all civil proceedings arising

---

[2] The jurisdiction of bankruptcy courts under the Bankruptcy Code was to include "items that the bankruptcy courts are now able to bear [sic] under [the 1898] Act § 2a," including "determination of dischargeability of debts [and] liquidation of non-dischargeable debts." H.R. Rep. No. 95-595, at 446, 49 (1977) (footnote referencing 1898 Act § 17c omitted), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6401, 6010; see also *id.* at 363 (noting that "the comprehensive grant of jurisdiction prescribed in proposed [statute] . . . is adequate to cover the full jurisdiction that the bankruptcy courts have today over dischargeability and related issues under Bankruptcy Act § 17c"), *reprinted in* 1978 U.S.C.C.A.N. at 6319; S. Rep. No. 95-989, at 77 (1978) (same), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5863.

under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). A bankruptcy court's "related to" jurisdiction is very broad, "including nearly every matter directly or indirectly related to the bankruptcy." *Mann v. Alexander Dawson (In re Mann)*, 907 F.2d 923, 926 n.4 (9th [869] Cir. 1990). The bankruptcy court's "related to" jurisdiction granted by the Bankruptcy Code derives directly from the Bankruptcy Clause, which grants Congress the power "[t]o establish ... uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const., art. 1, § 8. Congress expanded the Bankruptcy Court's Article I jurisdiction by granting federal district courts with "original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a). Thus, at present, the bankruptcy court's "related to" jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367 "over all other claims that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." *See Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1195 (9th Cir. 2005); *Sec. Farms v. Int'l Bhd. of Teamsters*, 124 F.3d 999, 1008 n.5 (9th Cir. 1997).

Even the discharge of a debtor does not automatically deprive the federal courts of jurisdiction over a claim "related to" the bankruptcy. *See Kieslich v. United States (In re Kieslich)*, 258 F.3d 968, 971 (9th Cir. 2001). Indeed, we have held that a bankruptcy court's "related to" jurisdiction includes post-confirmation jurisdiction over state court actions such as breach of contract, breach of convenant of good faith and fair dealing, and fraud when those claims have a "close nexus" to the bankruptcy proceeding. *In re Pegasus Gold Corp.*, 394 F.3d at 1194; *see also Celotex Corp. v. Edwards*, 514 U.S. 300, 309 (1995). We have also held that bankruptcy courts have post-discharge jurisdiction to enjoin collection actions, even if those actions occur in another country. *Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon)*, 153 F.3d 991, 996 (9th Cir. 1998).

In addition, bankruptcy courts retain their traditional equitable powers under the Bankruptcy Code. *Johnson v. Home State Bank*, 501 U.S. 78, 88 (1991) (per curiam) ("[T]he bankruptcy court retains its broad equitable power to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Code.") (quotation marks omitted). As the Supreme Court has instructed, when a creditor files a claim in bankruptcy, "the creditor triggers the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power." *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 58-59 (1989)). The bankruptcy court's equitable power is not unfettered; it must be exercised to carry out the provisions of the Bankruptcy Code. *Saxman v. Educ. Credit Mgmt. Corp. (In re Saxman)*, 325 F.3d 1168, 1174 (9th Cir. 2003). However, we have recognized that "a bankruptcy court is a court of equity and should invoke equitable principles and doctrines, refusing to do so only where their application would be 'inconsistent' with the Bankruptcy Code." *Beaty v. Selinger (In re Beaty)*, 306 F.3d 914, 922 (9th Cir. 2002) (citing *In re Myrvang*, 232 F.3d at 1124).

"Bankruptcy Courts have exclusive jurisdiction over nondischargeability actions brought pursuant to 11 U.S.C. § 523(a)(2), (4), (6) and (15)." *Rein v. Providian Fin. Corp.*, 270 F.3d 895, 904 (9th Cir. 2001). This is a dischargeability action brought pursuant to 11 U.S.C. § 523(a)(6). As we reasoned in *Kennedy*:

> "If it is acknowledged as beyond question that a complaint to determine dis-[870]chargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must follow that the bankruptcy court may also render a money judgment in an amount certain without the assistance of a jury. This is true not merely because equitable jurisdiction attaches to the entire cause of action but more importantly because it is impossible to separate the determination of dischargeability

> function from the function of fixing the amount of the nondischargeable debt."

Kennedy, 108 F.3d at 1017-18 (quoting *Snyder v. Devitt (In re Devitt)*, 126 B.R. 212, 215 (Bankr. D. Md. 1991)). Our sister circuits have reached similar conclusions. *Porges v. Gruntal & Co. (In re Porges)*, 44 F.3d 159, 165 (2d Cir. 1995); *Longo v. McLaren (In re McLaren)*, 3 F.3d 958, 965-66 (6th Cir. 1993); *N.I.S. Corp. v. Hallahan (In re Hallahan)*, 936 F.2d 1496, 1507-08 (7th Cir. 1991). Given the text and history of the Bankruptcy Code and the bankruptcy court's inherent equitable powers, it is clear, as we held in *Kennedy*, that bankruptcy courts have jurisdiction and power to enter money judgments in adjudicating nondischargeability adversary proceedings.

B

Sasson attempts to distinguish *Kennedy* from this case because *Kennedy* involved an unliquidated claim. *Kennedy* made no such distinction, and there is no principled jurisdictional distinction to be drawn. There is nothing in the text of the Bankruptcy Code or its history that contains a jurisdictional exception for debts that have been liquidated to judgment. To hold otherwise would be to deprive the bankruptcy court of its exclusive jurisdiction over bankruptcy discharge pursuant to 11 U.S.C. § 523(a). As the Supreme Court has noted, "[s]ince 1970[], the issue of nondischargeability has been a matter of federal law governed by the terms of the Bankruptcy Code." *Grogan v. Garner*, 498 U.S. 279, 284 (1991) (citing *Brown v. Felsen*, 442 U.S. 127, 129-30 (1979)). The Bankruptcy Code provides that bankruptcy courts "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105. Notably, it does not contain an additional clause stating "except when the debt has been liquidated to judgment."

The debtor invoked bankruptcy court subject matter and *in personam* jurisdiction by filing a voluntary petition in bankruptcy. With the commencement of the case, the bank-

ruptcy court acquired exclusive *in rem* jurisdiction over all the debtor's legal or equitable interests in property wherever located and by whomever held. 28 U.S.C. § 1334(e); *Commodity Futures Trading Comm'n v. Co Petro Mktg. Group, Inc.*, 700 F.2d 1279, 1282 (9th Cir. 1983). By filing a proof of claim, the creditor in this case became subject to the bankruptcy court's *in personam* jurisdiction, and the limitations of the Bankruptcy Code. *In re Simon*, 153 F.3d at 997. The parties were clearly subject to both subject matter and *in personam* jurisdiction of the bankruptcy court.

The fact that a debt has been previously liquidated to judgment does not deprive the bankruptcy court of jurisdiction, nor of any of its statutory and equitable power. It may, as we shall discuss in Part II.D, have an effect on the form of relief that the bankruptcy court grants in nondischargeability proceedings. However, it does not alter the *Kennedy* jurisdictional analysis. The existence of a state court judgment does not deprive the bankruptcy court of the statutory power to enter a new judgment of nondischargeability.

[871] C

Sasson argues that the *Rooker-Feldman* doctrine[3] alters this jurisdictional analysis. However, the *Rooker-Feldman* doctrine did not deprive the bankruptcy court of jurisdiction to enter the money judgment in the nondischargeability adversary proceeding. The *Rooker-Feldman* doctrine is based on the statutory proposition that federal district courts are courts of original, not appellate, jurisdiction. *See* 28 U.S.C. §§ 1331, 1332. Therefore, federal district courts have "no authority to review the final determinations

---

[3] The doctrine takes its name from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). *Rooker* held that federal statutory jurisdiction over direct appeals from state courts lies exclusively in the Supreme Court and is beyond the original jurisdiction of federal district courts. 263 U.S. at 415-16. *Feldman* held that this jurisdictional bar extends to particular claims that are "inextricably intertwined" with those a state court has already decided. 460 U.S. at 486-87.

of a state court in judicial proceedings." *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986). Only the Supreme Court has original jurisdiction to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." 28 U.S.C. § 1257(a). As the Supreme Court has recently explained, the *Rooker-Feldman* doctrine "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus.*, 125 S.Ct. 1517, 1521-22 (2005).

Application of the *Rooker-Feldman* doctrine in bankruptcy is limited by the separate jurisdictional statutes that govern federal bankruptcy law. *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1079 (9th Cir. 2000) (en banc). The *Rooker-Feldman* doctrine has little or no application to bankruptcy proceedings that invoke substantive rights under the Bankruptcy Code or that, by their nature, could arise only in the context of a federal bankruptcy case. *Id.* at 1081. In the exercise of federal bankruptcy power, bankruptcy courts may avoid state judgments in core bankruptcy proceedings, *see, e.g.*, 11 U.S.C. §§ 544, 547, 548, 549, may modify judgments, *see, e.g.*, 11 U.S.C. §§ 1129, 1325, and, of primary importance in this context, may discharge them, *see, e.g.*, 11 U.S.C. §§ 727, 1141, 1328.

The *Rooker-Feldman* doctrine has no application here. Sasson is not seeking to have the bankruptcy court review the merits of the state court judgment; rather, he is attempting to prevent the bankruptcy court from giving effect to the state court judgment. Likewise, the creditor is not seeking modification of the state court judgment; it is attempting to save the judgment from bankruptcy discharge.

In entering judgment, the bankruptcy court was exercising its exclusive statutory power to determine whether a debt is dischargeable in a bankruptcy case. *See* 11 U.S.C. §§ 523(a)(6), 727(a)(2). Actions seeking a determination of

nondischargeability are core bankruptcy proceedings, *see* 28 U.S.C. § 157(b)(2)(I), and are not subject to the *Rooker-Feldman* doctrine. *See Gruntz*, 202 F.3d at 1081-82. The *Rooker-Feldman* doctrine did not deprive the bankruptcy court of jurisdiction to enter the money judgment in this case.

[872] D

Sasson also argues that the bankruptcy court lacked jurisdiction to enter a money judgment by operation of the full faith and credit statute, 28 U.S.C. § 1738, and the doctrines of res judicata and collateral estoppel. Unlike the *Rooker-Feldman* doctrine, these doctrines do not affect the jurisdiction of federal courts. *See, e.g., EEOC v. Children's Hosp. Med. Ctr. of N. Cal.*, 719 F.2d 1426, 1430 (9th Cir. 1983) (en banc) ("[R]es judicata is an affirmative defense under the rules of civil procedure. Fed. R. Civ. P. 8(c). It is not a jurisdictional doctrine."). Moreover, central to the operation of the bankruptcy courts is the idea that the debtor's debts, including debts liquidated to judgments, may be modified and discharged. *See, e.g.*, 11 U.S.C. §§ 544, 547, 548, 549, 727, 1129, 1141, 1325, 1328.

In short, "[f]inal judgments in state courts are not necessarily preclusive in United States bankruptcy courts." *Gruntz*, 202 F.3d at 1079. Thus, we must reject Sasson's argument that the doctrines of full faith and credit, *res judicata*, and collateral estoppel deprive the bankruptcy court of the jurisdiction to enter a money judgment in a discharge order involving liquidated debts.

This does not, of course, mean that the preclusion doctrines do not have any bearing on federal bankruptcy discharge proceedings. The Supreme Court has stated that "collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a)." *Grogan*, 498 U.S. at 284 n. 11. Further, we have held that "[t]he full faith and credit requirement of § 1738 compels a bankruptcy court in a § 523(a)(2)(A) nondischargeability proceeding to give collateral estoppel effect to a prior state court judgment."

Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 801 (9th Cir. 1995) (per curiam).[4]

In the bankruptcy discharge context, this means that "[i]f, in the course of adjudicating a state-law question, a state court should determine factual issues using standards identical to those of [§ 523], then collateral estoppel, in the absence of countervailing statutory policy, would bar relitigation of those issues in the bankruptcy court." *Brown*, 442 U.S. at 139 n.10. The classic example of the proper use of issue preclusion in discharge proceeding is when the amount of the debt has been determined by the state court and reduced to judgment. In that event, if there are no new issues, the bankruptcy court should ordinarily decline to allow the parties to relitigate the debt amount and should give the state court judgment as to the amount of preclusive effect. *Comer v. Comer (In re Comer)*, 723 F.2d 737, 740 (9th Cir. 1984). For the same reason, we have held that if the issue of fraud had [873] been litigated in state court, the state court judgment would preclude relitigation of the same issue by the bankruptcy court in discharge proceedings. *Nourbakhsh*, 67 F.3d at 801. Thus, the doctrines of preclusion

---

[4] "In determining whether a party should be estopped from relitigating an issue decided in a prior state court action, the bankruptcy court must look to that state's law of collateral estoppel." *Diamond v. Kolcum (In re Diamond)*, 285 F.3d 822, 826 (citing *Nourbakhsh*, 67 F.3d at 800). Thus, we have held:

> Under California law, collateral estoppel only applies if certain threshold requirements are met: 'First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.'

Cal-Micro, Inc. v. Cantrell, (In re Cantrell), 329 F.3d 1119, 1123 (9th Cir. 2003) (quoting *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001)).

play an important part in dischargeability proceedings by preventing the relitigation of factual and legal issues already determined by other courts.

However, a preexisting judgment does not have preclusive effect on the bankruptcy court's determination of dischargeability. The Supreme Court firmly rejected such an idea in *Brown*, specifically holding that "the bankruptcy court is not confined to a review of the judgment and record in the prior state-court proceedings when considering the dischargeability of respondent's debt." *Brown*, 442 U.S. at 138-39. We explained this analytical distinction in *Comer*:

> *Res judicata* should not be applied to bar a claim by a party in bankruptcy proceedings, nor should a bankruptcy judge rely solely on state court judgments when determining the nature of a debt for purposes of dischargeability, if doing so would prohibit the bankruptcy court from exercising its exclusive jurisdiction to determine dischargeability.

In re Comer, 723 F.2d at 740.

As we explained in *Comer*, determination of the amount of the debt by the state court did not impact the dischargeability decision:

> In the present case, applying *res judicata* to bar the bankruptcy court from looking behind the default judgment to determine the actual amount of the obligation would not preclude the exercise of the bankruptcy court's exclusive jurisdiction to determine the nature of the subject debt for purposes of dischargeability.

Id. In *Comer*, because the state court judgment involved the "*extent* of [the debtor's] obligation . . ., not the *nature* of that debt," it was not relevant to the bankruptcy court's exercise of its power to determine the dischargeability of a debt; therefore, we concluded that the bankruptcy court properly gave preclusive effect to the prior judgment. *Id.*

In this case, the parties were not relitigating the merits of the state court judgment in the nondischargeability pro-

ceeding. The adversary proceeding was based on Sasson's "willful and malicious" postjudgment conduct, not on the contractual breach that formed the basis of the state court judgment. Thus, the parties were litigating a different claim in the nondischargeability proceeding in bankruptcy, which was not precluded by the state court contract claim judgment. *Id.* Indeed, the creditor was not seeking to upend the state court judgment; rather, he simply was attempting to enforce it by defending against the discharge of the debt in bankruptcy. The bankruptcy court did not redetermine the amount of the state court debt; the court relied upon the state court determination. Thus, the various preclusion doctrines did not operate to prevent the bankruptcy court from entering a judgment of nondischargeability in this case. *See Diamond*, 285 F.3d at 829. The bankruptcy court's actions throughout the adversary proceedings were entirely consistent with the law of issue preclusion as we have applied it to bankruptcy discharge.

The only remaining question, then, is whether the various doctrines of issue preclusion prevented the bankruptcy court from enforcing its dischargeability determination by including a money judgment in its resolution of the adversary proceeding. They clearly do not. As the Supreme Court has held, affording full faith and credit to a judgment does not [874] require a court to "adopt the practices of [the jurisdiction that granted the judgment] regarding the time, manner, and mechanisms for enforcing judgments." *Baker ex rel. Thomas v. General Motors Corp.*, 522 U.S. 222, 235 (1998). As the Supreme Court explained, "[e]nforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law." *Id.* (citing *McElmoyle ex rel. Bailey v. Cohen*, 13 Pet. 312, 325, 10 L.Ed. 177 (1839) (holding that judgment may be enforced only as "laws [of enforcing forum] may permit") and Restatement (Second) of Conflict of Laws § 99 (1969) ("The local law of the forum determines the methods by which a judgment of another state is enforced.")).

In sum, none of the doctrines of issue preclusion dictate how a bankruptcy court may choose to enforce its determination of nondischargeability. That is a question reserved to the bankruptcy courts in the exercise of their broad equitable powers in bankruptcy. In so doing, as we have discussed, bankruptcy courts are authorized by statute to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 28 U.S.C. § 105. In addition, the bankruptcy court may use its inherent equitable power to fashion relief, so long as the remedy is consistent with the objectives of the Bankruptcy Code. *In re Saxman*, 325 F.3d at 1174. Thus, as a matter of law, a prior judgment does not preclude a bankruptcy court from exercising its power to determine how best to enforce its own dischargeability order.

The bankruptcy court here, therefore, had the authority to enter a money judgment in conjunction with its nondischargeability order. "It does not follow, however, that the court was bound to exercise its authority. And it probably would not and should not have done so except under unusual circumstances such as here exist." *Hunt*, 292 U.S. at 241. The existence of a prior judgment may introduce some prudential concerns, such as comity, that a bankruptcy court should take into consideration in fashioning relief. *See Smith v. Lachter (In re Smith)*, 242 B.R. 694 (B.A.P. 9th Cir. 1999) (noting that the filing of a new money judgment is not necessary when there is an existing effective state court judgment); *Gertsch v. Johnson & Johnson Fin. Corp. (In re Gertsch)*, 237 B.R. 160 (B.A.P. 9th Cir. 1999) (discussing the potential confusion and complication caused by the entry of multiple judgments).[5] Although important considerations,

---

[5] We interpret *Smith* and *Gertsch* as involving prudential considerations. To the extent that these cases may be construed as holding that bankruptcy courts have no jurisdiction or authority to enter a money judgment on a liquidated claim, we must respectfully disagree. We also disagree with the approach taken by the Fourth Circuit in *Heckert v. Dotson (In re Heckert)*, 272 F.3d 253, 257 (4th Cir. 2001). In our opinion,

these prudential concerns do not affect the jurisdiction and the power of the bankruptcy court to enter a new money judgment as part of declaring a debt nondischargeable.[6] [875] Rather, these prudential issues are best committed to the judgment of the bankruptcy court, subject to review for abuse of discretion. *In re Myrvang*, 232 F.3d at 1121. In examining prudential considerations, we must also remember that "[t]he Supreme Court found that the overriding purpose of § 523 is to protect victims of fraud." *Muegler v. Bening*, 413 F.3d 980, 983 (9th Cir. 2005) (citing *Cohen v. de la Cruz*, 523 U.S. 213, 222-23 (1998)). Thus, a bankruptcy court does not act outside the purposes of the Bankruptcy Code by providing victims of fraud an additional means of enforcing a nondischargeability judgment in an appropriate case.

Applying these principles to the case at hand, we conclude that the bankruptcy court acted well within its discretion in entering the new money judgment. Several circumstances rendered the bankruptcy court's entry of a new money judgment necessary and appropriate. The creditor obtained a state court judgment, which proved uncollectible at the time. When the creditor commenced further collection proceedings, the debtor filed bankruptcy. Based on the debtor's post-state judgment behavior, the bankruptcy court concluded that the debt was nondischargeable because the debtor had engaged in fraud. The court entered a money judgment as part of the judgment of nondischargeability. The debtor did not object, but waited until the creditor had allowed the state court judgment to lapse in favor of the dis-

---

Heckert did not give sufficient consideration and deference to bankruptcy court's broad equitable powers to fashion relief.

[6] Many of the prudential considerations involved in the entry of multiple judgments can be addressed in the original state forum. For example, in California, the rule as to multiple judgments is that, if a party receives multiple judgments on a single claim, that party can have just one satisfaction. *See Textron Financial Corp. v. National Union Fire Ins. Co. of Pittsburgh*, 118 Cal. App. 4th 1061, 1078 (Cal. Ct. App. 2004); *McCall v. Four Star Music Co.*, 51 Cal. App. 4th 1394, 1398 (Cal. Ct. App. 1996).

charge judgment. When the discharge judgment was renewed, the debtor then sought to prevent the bankruptcy court from issuing an enforcement order that would give effect to the prior state judgment, arguing that the lapsed state court judgment precluded it. However, as the BAP found, the debtor had engaged in "wilful and malicious behavior" in rendering the initial state court judgment uncollectible. The debtor in this case is clearly attempting to manipulate both the federal and state court systems to avoid paying the debt, which the bankruptcy court has found nondischargeable. Given the history of the case, the bankruptcy court's action in entering a new money judgment and renewing the judgment was entirely proper.

Sasson would turn the law of preclusion on its head by having us hold that the existence of a lapsed underlying state court judgment precludes enforcement of that judgment in federal court. He would have us hold that we can only uphold a creditor's right to full faith and credit of a state court judgment by denying the creditor the right to enforce the judgment. In this context, the doctrines of full faith and credit, collateral estoppel, and res judicata do not apply to prevent a bankruptcy court from entering a money judgment when ruling on the dischargeability of the underlying debt in the exercise of its equitable power.

III

For all of these reasons, we conclude that the court did not err in declining to award relief pursuant to Rule 60(b)(4). Under Federal Rule of Civil Procedure 60(b), a court may relieve a party from judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud or other misconduct; (4) avoid judgment; (5) a satisfied or discharged judgment; or (6) any other reason justifying relief from operation of judgment. Sasson contends that he is entitled to relief because the judgment entered by the bankruptcy court was void. A "'judgment is not void merely because it is erroneous.'" *Ministry of Def. & Support for the Armed Forces v. Cubic Def. Sys.*, 385 [876] F.3d 1206, 1225 (9th Cir. 2004)

(quoting *United States v. Holtzman*, 762 F.2d 720, 724 (9th Cir. 1985)), petition for cert. filed, 73 U.S.L.W. 3498 (Feb. 11, 2005). We have consistently held that a "final judgment is 'void' for purposes of Rule 60(b)(4) *only if* the court that considered it lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law." *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999) (emphasis added); *Cubic Def. Sys.*, 385 F.3d at 1226 ("A judgment is void only if the issuing court lacked subject-matter jurisdiction over the action or if the judgment was otherwise entered in violation of due process."). Given that the bankruptcy court acted well within its jurisdiction and authority in entering the money judgment in the first instance, the judgment was not void. The court was entirely correct in declining to grant relief under Rule 60(b).

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-16364
BAP No. NC-02-01410-MaMeP
[STAMP: FILED Nov. 10, 2005
Cathy A. Catterson, Clerk
U.S. Court of Appeals]

IN RE ROBERT SASSON, *Debtor.*

ROBERT SASSON, *Appellant,*

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN, *Appellee.*

ORDER

Before: THOMAS, GRABER, and PAEZ, Circuit Judges.

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX C

[STAMP: NOT FOR PUBLICATION]

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

IN RE ROBERT SASSON, *Debtor.*

ROBERT SASSON, *Appellant,*

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN, *Appellees.*

[STAMP: FILED May 27, 2003
Nancy B. Dickerson, Clerk
U.S. Bkcy. App. Panel of the Ninth Circuit]

BAP No. NC-02-01410-MaMeP
Bk. No. 89-52300-JRG
Adv. No. 89-5358

MEMORANDUM[7]

Argued and Submitted February 20, 2003
at San Jose, California
Filed—May 27, 2003
Appeal from the United States Bankruptcy Court for the Northern District of California
Honorable James R. Grube, Bankruptcy Judge, Presiding

Before: MARLAR, MEYERS,[8] and PERRIS, Bankruptcy Judges

---

[7] This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, *res judicata*, or collateral estoppel. *See* 9th Cir. BAP Rule 8013-1.

[8] Hon. James W. Meyers, Bankruptcy Judge for the Southern District of California, sitting by designation.

[2] INTRODUCTION

In this appeal, we affirm the validity and preclusive effect of the bankruptcy court's money judgment, which was entered in a nondischargeabilility proceeding, as well as the bankruptcy court's jurisdiction to enforce its judgment.

FACTS

1. The State Court Action[9]

In November 1988, Norman Sokoloff, M.D., individually and as Trustee of the Camelot Medical Group, Inc. Profit Sharing Plan ("Sokoloff"), obtained a $120,000 state court summary judgment against the debtor, Robert Sasson ("Sasson"), for breach of a promissory note. Before Sokoloff could enforce the judgment, Sasson obtained a stay.

As a condition of the stay and to preserve the status quo, Sasson was ordered not to dissipate any assets. However, three days prior to the issuance of the stay, Sasson had placed a deposit on a residence. In January. 1989, while the stay was in force, Sasson closed escrow and encumbered the residence with a first priority lien for $225,000. Then, in February 1989, while the stay was still in effect, Sasson gave his parents a second deed of trust, allegedly to secure a loan in the amount of $28,675.33. He then used those funds to pay creditors other [3] than Sokoloff, including Sasson's attorney.

Sasson also had domestic problems, and a dissolution proceeding was pending at this same time. In violation of the state court stay, in January 1989, Sasson and his wife entered into a stipulation to divide about $435,000 worth of community property, and Sasson transferred approximately one-half of the community property to his wife.[10]

---

[9] See the bankruptcy court's Findings of Fact and Conclusions of Law (May 29, 1991).

[10] Under California law, the wife's share was rendered exempt from Sasson's liability for the state court judgment. *See* former Cal. Civ. Code § 5120.160 (Cal. Fam. Code § 916 (West 1994)).

On March 1, 1989, Sasson's post-trial motion was denied, the stay was dissolved, and state court entered a second judgment against him in the sum of $149,489.53[11] plus accruing interest. Sokoloff recorded an abstract of this judgment on April 3, 1989, but did not thereafter renew it, and it eventually lapsed.

2. Sasson's Bankruptcy

On May 15, 1989, Sasson filed a chapter 7[12] petition. His [4] bankruptcy schedules did not disclose the liens related to his residence, nor the chronology of events leading to his acquisition thereof. Instead, Sasson claimed the residence as exempt property.

Sokoloff filed a complaint to determine his judgment debt nondischargeable under § 523(a)(6)[13] and to deny Sasson his discharge pursuant to § 727(a)(2).[14]

---

[11] This judgment was filed on March 3, 1989. The award included $100,000 on the note, plus $23,368.97 prejudgment interest, costs of $1,020.56, and attorney's fees of $25,000.

The state court also awarded postjudgment interest of 27.39 per day from March 4, 1989 until the judgment was satisfied.

[12] Unless otherwise indicated, chapter and section references are to the Bankruptcy Code, 11 U.S.C. § 101-1330, and rule references are to the Federal Rules of Bankruptcy Procedure ("Fed. R. Bankr. P.") or to the Federal Rules of Civil Procedure (Fed. R. Civ. P.") incorporated therein.

[13] Count Seven of the complaint stated, in pertinent part:

> In order to avoid paying the amount due by reason of said loan and the judgment obtained thereon, and in violation of an order of the Superior Court of the State of California, and in order to hinder, delay and defraud Plaintiff, Plaintiff is informed and believes and thereupon alleges that Defendant willfully and maliciously transferred or removed, or permitted the transfer and removal, of his property, thereby willfully and maliciously injuring Plaintiff and the property of Plaintiff. Consequently, Defendant is indebted, to Plaintiff in the amount of said judgment, and such debt should be declared to be a nondischargeable debt as provided in 11 U.S.C. § 523.

Complaint (Sept. 11, 1989), at 8.

The bankruptcy court found that by transferring and encumbering his assets in violation of the state court stay, Sasson had effectively changed an otherwise collectible [5] judgment, absent the stay, into an uncollectible claim. The court determined that these acts constituted a willful and malicious injury under § 523(a)(6), and entered judgment for $148,142.46, plus costs of $1,020.56 and accruing interest. "1991 Judgment").

Although Sasson appealed the 1991 Judgment, he voluntarily dismissed the appeal, and the 1991 Judgment became final. In he 1990s, Sokoloff utilized various collection procedures in bankruptcy court, but apparently was unsuccessful in collecting the judgment. Sokoloff renewed the 1991 Judgment on April 19, 2001, and recorded an Abstract of Judgment in the amount of $239,160.42 with the Santa Clara County Recorder, on July 9, 2001.[15]

Sasson's bankruptcy case was administratively closed in due course.

3. Sasson's Motion to Vacate 1991 Judgment—Rule 60(b)

In April 2002, Sasson motion to reopen his bankruptcy case so that he could attempt to vacate the 1991 Judgment and quash "certain post-judgment processes," presumably

---

[14] The bankruptcy court subsequently resolved the § 727(a)(2) claim in Sasson's favor, finding that Sokoloff failed to establish that Sasson had transferred the assets with actual intent to hinder, delay or defraud creditors. 11 U.S.C. 727(a)(2).

In 1991, the "willful and malicious" standard of § 523(a)(6) did not require subjective intent to injure, as it does now. *See Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998). Therefore, the court could, without legal inconsistency, find Sasson's conduct to be "willful and malicious" under § 523(a)(6) yet not find "actual intent" to hinder, delay, or defraud Sokoloff under § 727(a) (2).

[15] A space was provided for the renewal of judgment in Sasson's excerpts of record, although it was omitted. Nevertheless, it is undisputed that the renewal was obtained because the Abstract of Judgment, which was provided, refers to he April 19, 2001 renewal of judgment.

Sokoloff's ongoing collection activities. Sasson moved pursuant to Fed. R. Civ. P. 60(b), incorporated by Fed. R. Bankr. P. 9024 ("Rule 60(b)"). [6] Presumably moving under Rule 60(b)(4),[16] he contended that the money judgment portion of the 1991 Judgment and the subsequent collection activities were void for lack of subject matter jurisdiction.

At a hearing on the Rule 60(b) motion, Sasson argued that it was unlawful to have both state and federal judgments arising from the same transaction. The bankruptcy court then explained that the 1991 Judgment was a separate federal judgment. The bankruptcy court further explained that, in 1991, it had given the state court judgment res judicata effect only to "fix[] the amount of the claim . . ." Tr. of Proceedings (June 27, 2002), at 1. The bankruptcy court concluded, in disposing of the Rule 60(b) motion, that the 1991 Judgment was being enforced properly in bankruptcy court pursuant to Fed. R. Civ. P. 69, incorporated by Fed. R. Bankr. P. 7069 ("Rule 69").

The court's order denying Sasson's Rule 60(b) motion was entered on July 31, 2002, and Sasson timely appealed the order.

ISSUES

1. Whether the bankruptcy court had jurisdiction to enter a money judgment in the 1991 nondischargeability [7] proceeding.

2. Whether the 1991 Judgment was otherwise void.

---

[16] Rule 60(b) provides, in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void; . . . The motion shall be made within a reasonable time . . . .

Fed. R. Civ. P. 60 (b)

3. Whether the bankruptcy court had jurisdiction to entertain enforcement proceedings of its 1991 Judgment. years after the bankruptcy case was closed.

STANDARDS OF REVIEW

The bankruptcy court's subject matter jurisdiction is a question of law, reviewed de novo. *See Ferm v. UST (In re Crowe)*, 243 B.R. 43, 47 (9th Cir. BAP), *aff'd mem.*, 246 F.3d 673 (9th Cir. 2000). Similarly, we review de novo the bankruptcy court's interpretation of the Bankruptcy Code and Rules. *Temecula v. LPM Corp. (In re LPM Corp.)*, 300 F.3d 1134, 1136 (9th Cir. 2002).

While a bankruptcy court's decision on a Rule 60(b) motion is generally reviewed for an abuse of discretion, *Wilson v. City of San Jose*, 111 F.3d 688, 691 (9th Cir. 1997), a denial of a Rule 60(b)(4) motion, which seeks to set aside a judgment as void, is a question of law reviewed de novo. *See Virtual Vision, Inc. v. Praegitzer Indus., Inc.*, 124 F.3d 1140, 1143 (9th Cir. 1997); *Cossio v. Cate (In re Cossio)*, 163 B.R. 150, 154 (9th Cir. BAP 1994), *aff'd mem.*, 56 F.3d 70 (9th Cir. 1995).

[8] DISCUSSION

A. THE BANKRUPTCY COURT'S JURISDICTION TO ENTER A MONEY JUDGMENT IN 1991

Sasson contends that the bankruptcy court lacked subject matter jurisdiction to enter the 1991 Judgment because the state court had already adjudicated the debt. Because nondischargeability is a core matter pursuant to 28 U.S.C. § 157(b)(2)(I), we need address only the aspect of whether the bankruptcy court had jurisdiction to enter the monetary portion of the judgment.

In the Ninth Circuit, a bankruptcy court has the authority to enter a money judgment as part of its exclusive jurisdiction to determine the dischargeability of debts. *See Cowen v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1016 (9th Cir. 1997). There, the Ninth Circuit stated:

> If it is acknowledged as beyond question that a complaint to determine dischargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must follow that the bankruptcy court may also render a money judgment in an amount certain without the assistance of a jury. This is true not merely because equitable jurisdiction attaches to the entire cause of action but more importantly because it is impossible to separate the determination of dischargeability function from the function of fixing the amount of the non-dischargeable debt.

Id. at 1017-18 (quoting *Snyder v. Devitt (In re Devitt)*, 126 B.R. 212, 215 (Bankr. D. Md. 1991)).

In *Kennedy*, the creditor's claim was unliquidated. Sasson argues, therefore, that a bankruptcy court's authority to enter a money judgment is limited to situations where the claim has [9] *not* already been liquidated in state court.

While the Bankruptcy Code does not require a debt to have been reduced to a prepetition judgment in order for a bankruptcy court to determine whether it is nondischargeable, *Banks v. Gill Distrib. Cents., Inc. (In re Banks)*, 263 F.3d 862, 868 (9th Cir. 2001), when a party's liability and the resultant damages have previously been reduced to judgment in another court, such judgment must be given full faith and credit. *See* 28 U.S.C. § 1738 (Full Faith and Credit statute). Generally, a federal court is precluded from entering a new monetary judgment based on a cause of action that has already been fully litigated in a California state court.[17]

---

[17] Once a liquidated debt is determined to be nondischargeable, then the state court judgment, which is a complete adjudication of the debtor's liability for, including the amount of, such debt, is given res judicata effect. *See Cohen v. de la Cruz*, 523 U.S. 213, 218 (1998) (stating that damages recoverable under applicable state law are nondischargeable debt under § 523(a)(2)); *Roussos v. Michaelides (In re Roussos)*, 251 B.R. 86, 93-94 (9th Cir. BAP 2000), *aff'd*, 33 Fed. Appx. 365 (9th Cir. 2002) (final state court judgment was res judicata on amount of nondischargeable debt). *Cf. Comer v. Comer (In re Comer)*, 27 B.R. 1018, 1021 (9th Cir. BAP 1983),

Smith v. Lachter (In re Smith), 242 .R. 694, 703-04 (9th Cir. BAP 1999).

[10] Sasson relies for support on *Gertsch v. Johnson & Johnson Fin. Corp. (In re Gertsch)*, 237 B.R. 160 (9th Cir. BAP 1999). In *Gertsch*, lender Johnson & Johnson Finance Corp. ("JJFC") obtained a prepetition state court judgment against Dr. Gertsch for breach of contract. When Dr. Gertsch filed for bankruptcy, JJFC sought a declaration that the entire debt was nondischargeable under § 523(a)(2)(B) (fraudulent financial statement), and also prayed for the court to find Dr. Gertsch liable for damages. *Id.* at 164. The bankruptcy court granted summary judgment in favor of JJFC.[18] It then entered a money judgment against Dr.

---

aff'd, 723 F.2d 737 (9th Cir. 1984) ("As a general proposition, bankruptcy courts are *not* free to disregard the prior judgments of other state and federal tribunals where the doctrines of res judicata or collateral estoppel would otherwise apply.") (emphasis added).

Here, the bankruptcy court was not asked to apply collateral estoppel to the state court's factual findings, because the breach of contract judgment was indisputedly dischargeable debt. Instead, the court was asked to find the judgment debt nondischargeable based on Sasson's post-judgment conduct, which was "willful and malicious" and by which he had, by violation of a court order, rendered the debt uncollectible. Thus, the bankruptcy court gave the state court judgment res judicata effect only with regard to the amount of the judgment.

[18] The court thus determined the nondischargeability of the liquidated breach of contract debt by determining its nature. *See Archer v. Warner*, ___ U.S. ___, 123 S. Ct. 1462, 1466 (2003) (holding that claim preclusion did not prevent the bankruptcy court from looking behind a settlement agreement in order to decide whether the debt at issue was one for money obtained by fraud); *Brown v. Felsen*, 442 U.S. 127, 136 (1979) where a stipulation and consent decree settling a collection suit did not mention fraud, the bankruptcy court was not precluded from hearing evidence on the fraud claim); *Banks*, 263 F.3d at 869 ("While an action may seem to be non-fraud-based for state purposes, this does not foreclose a later determination by the bankruptcy court that what occurred was fraudulent and therefore nondischargeable"); *Comer v. Comer (In re Corner)*, 723 F.2d 737, 740 (9th Cir. 1984) (stating that res judicata does not apply to the bankruptcy court's determination of the nature of the debt in a nondischargeability proceeding).

Gertsch, which included the base amount of the state court judgment plus accrued postjudgment interest.

On appeal, the BAP vacated and remanded for a clarification that the bankruptcy court had not entered an independent money judgment, but had merely determined the debt that was already established by the state court to be nondischargeable. *Id.* at 172. The BAP reasoned that two judgments for the same debt was [11] improper, and stated:

> The judgment, prepared by JJFC, should have been more artfully worded to reflect that it was not creating a separate money judgment. The problems are more than merely theoretical. The state court has entered a judgment for $1,157,574.96 according to proof acceptable to it. The bankruptcy court merely accepted that sum and added post-judgment interest through the date of its judgment, entering a judgment for $1,373,867.02. In principle, the judgment debtor could return to the state court for relief from that judgment for reasons permitted by state law, and the state court could reduce the judgment debt. Were such reasons to exist, the separate federal money judgment, *not based upon any independent determination*, adds nothing but confusion. Moreover, it might give the plaintiff a windfall, by rolling post-judgment interest into the principal of the new federal money judgment, on which post-judgment interest runs, transmuting the state court post-judgment simple interest into compound interest. Where the debt at issue has been reduced to judgment, the bankruptcy court's judgment in a nondischargeability action should merely declare the prior judgment nondischargeable (or not) in whole or in part.

Id. at 172 (emphasis added).

The facts of our case merely require a common-sense application of existing law. Unlike *Gertsch*, the court here made an "independent determination" that a *new* claim arose, created by Sasson's prepetition, *postjudgment*, ma-

nipulative conduct. That conduct was willful and malicious under § 523(a)(6). In addition, like *Gertsch*, the *amount*, of the debt that the court then determined to be nondischargeable had already been determined by the state court judgment.[19]

Sasson also relies on *Smith*. In *Smith*, the creditors sought to have their claim, which was a lapsed Arizona state- [12] court judgment for breach of contract, declared nondischargeable under § 523(a)(2)(B). As in *Gertsch*, the bankruptcy court entered a new money judgment in favor of the creditors, which it calculated by taking the Arizona judgment principal amount, adding postjudgment interest at the state law rate, and deducting the debtor's interest payments to date. *Smith*, 242 B.R. at 702. On appeal, the BAP held that the bankruptcy court was barred by the doctrine of res judicata from entering a new money judgment when there was already a fully litigated state court judgment. *Id.* at 703-04.

The *Smith* panel consistently emphasized that there were also prudential reasons for declining to enter a separate federal money judgment where the underlying state court judgment had not been renewed. The BAP stated: "The efficacy of Arizona judgments under these circumstances is a matter better left to the Arizona courts, without the added complication of a parallel federal judgment." *Id.* at 704.

In *Smith*, the claim had previously been reduced to judgment in a proceeding in the Arizona Superior Court. In contrast, here, the underlying claim was Sasson's *postjudgment* tortious conduct consisting of dissipating his assets and rendering the state court judgment uncollectible.

---

[19] Federal law governs the dischargeability of debts, but, generally, nonbankruptcy law is applied to determine the existence, amount, and validity of a "claim" in bankruptcy. *See Cohen*, 523 U.S. at 218; *Roussos*, 251 B.R. at 92.

In the instant case, the bankruptcy court clearly had jurisdiction both to enter the 1991 Judgment of nondischargeability and to determine the amount of damages caused by Sasson's postjudgment conduct. Thus, we conclude that the bankruptcy court had complete jurisdiction to enter the 1991 judgment as to both § 523(a)(6) liability and the monetary [13] amount by which Sokoloff was harmed.

B. SASSON'S RULE 60(B)(4) ATTACK ON THE 1991 JUDGMENT

Sasson also maintains that, because the judgment debt had already been liquidated in state court, therefore the separate 1991 Judgment is void and should be vacated. Fed. R. Civ. P. 60(b)(4). In addition to the reasons for rejecting this argument previously set forth, we note this was a direct attack on the 1991 Judgment.[20] See *Watts v. Pinckney*, 752 F.2d 406, 410 (9th Cir. 1985). We conclude, based on the following analysis, that the 1991 Judgment was not void.

A "void" judgment is one "which from its inception was a complete nullity and without legal effect." *Audre, Inc. v. Casey (In re Audre, Inc.)*, 216 B.R. 19, 29 (9th Cir. BAP 1997). Thus, it is commonly acknowledged that a judgment is void if the rendering court lacked subject matter jurisdiction. *Watts*, 752 F.2d at 410; *Owens-Corning Fiberglas Corp. v. Cent. Wholesale, Inc. (In re Cent. Wholesale, Inc.)*, 759 F.2d 1440, 1448 (9th Cir. 1985). Nonetheless, the concept of "voidness" is subject to qualification "in light of every court's jurisdiction to determine its own jurisdiction." *Wetherbee v. Willow Lane, Inc.* [14] (*In re Bestway Prods., Inc.*), 151 B.R. 530, 538 (Bankr. E.D. Cal. 1993), *aff'd mem.*, 165

---

[20] Moreover a Rule 60(b)(4) motion is an exception to the collateral attack doctrine to the extent it provides that a void judgment may be set aside at any time. *See United States v. Tittjung*, 235 F.3d 330, 335 (7th Cir. 2000). A Rule 60(b)(4) motion, grounded upon a void judgment, may be brought at any time and is not constrained by the "reasonableness" requirement. *Meadows v. Dom. Rep.*, 817 F.2d 517, 521 (9th Cir. 1987) (citing 11 C. Wright & A. Miller, *Federal Practice and Procedure*, § 2862 (1973) and *Bookout v. Beck*, 354 F.2d 823, 825 (9th Cir. 1965)).

B.R. 339 (9th Cir. BAP 1994). As noted in one prominent treatise:

> [A] court has jurisdiction to determine its own jurisdiction. . . . a court's determination that it has jurisdiction of the subject matter is binding on that issue, if the jurisdictional question actually was litigated and decided, or if a party had an opportunity to contest subject-matter jurisdiction and failed to do so.

11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure: Civ. 2d* § 2862 (1992).

The Ninth Circuit recognizes that only an egregious jurisdictional error, not mere error, will render a final judgment void. *See Watts*, 752 F.2d at 409 (merely "erroneous" judgment is not void); *Tsafaroff v. Taylor (In re Taylor)*, 884 F.2d 478, 482 (9th Cir. 1989) (stay lift order entered after dismissal of both the bankruptcy case and the adversary proceeding was a "legal nullity"); *Center Wholesale*, 759 F.2d at 448 (to render a judgment void, a due process violation must be constitutional, "not merely statutory").

This policy is rooted in the finality of judgments and the preclusive doctrine of res judicata. *See Stoll v. Gottlieb*, 305 U.S. 165, 171 (1938) (ruling that a federal judgment must be honored even "assuming that the Bankruptcy Court did not have jurisdiction of the subject matter"). "Res judicata" forecloses the "relitigation of matters that have once been litigated and decided." 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure: Juris. 2d*, § 4402, at 7-8 (West Group 2002). "A lack of subject-matter jurisdiction does not of itself depreciate any of the central values of judicial [15] finality." 18A C. Wright et al., *supra*, § 4428, at 10.

In our determination whether a court committed an actionable miscarriage of its jurisdiction, we are guided by the *Restatement (Second) of Judgments*:

> In very limited circumstances a judgment in a contested action may be subsequently attacked for lack

of subject matter jurisdiction. As stated in § 12, it must appear that:

(1) The subject matter of the action was so plainly beyond the court's jurisdiction that its entertaining the action was a manifest abuse of authority; or

(2) Allowing the judgment to stand would substantially infringe the authority of another tribunal or other agency of government; or

(3) The judgment was rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction and as a matter of procedural fairness the party seeking to avoid the judgment should have opportunity belatedly to attack the court's subject matter jurisdiction.

Id., § 69, comment (a) (1982).

Here, it is abundantly clear that the bankruptcy court had exclusive jurisdiction over the nondischargeability proceeding, and also had the authority to determine its own jurisdiction. *See Cal., State Bd. of Equalization v. Harleston (In re Harleston)*, 275 B.R. 546, 549 (9th Cir. BAP 2002); *Senoda v. Cabrera*, 189 F.3d 1047, 1050 (9th Cir. 1999) (federal courts have power and duty to examine their own jurisdiction).

Sasson had the opportunity to contest the court's subject matter jurisdiction in the proceeding leading to the entry of the 1991 Judgment. Therefore, any alleged erroneous determination by the bankruptcy court that it had jurisdiction to enter the monetary judgment did not render the 1991 Judgment [16] a nullity, because the bankruptcy court still had general subject matter jurisdiction of the proceeding. *See* 18 Wright et al., *supra*, § 4403 ("courts have repeatedly recognized that res judicata is not defeated by error in the initial judgment"). As a general rule, "a judgment entered by a federal court acting beyond its subject matter jurisdic-

tion remains eligible for res judicata effects if there is no other defect." 18A Wright et al., *supra*, § 4427, at 5.

Because the bankruptcy court had core jurisdiction to determine a § 523(a)(6) challenge to the dischargeability of Sokoloff's debt, its judgment was not "void" merely because of the method by which it calculated damages. It is well established law that "[i]f a second action is pursued to entry f a final judgment inconsistent with a prior judgment, the second judgment ordinarily prevails whether the res judicata effects of the first judgment were ignored by the parties or expressly rejected by the court in the second action." 18 *Wright et al., supra*, § 4404, at 60.

The policy against vacating final judgments for mere error" in the exercise of a court's subject matter jurisdiction was illustrated in *Watts*. In that case, the district court had entered a judgment against an individual defendant even though the claim fell under exclusive admiralty jurisdiction and the remedy was solely against the United States. *Watts*, 752 F.2d at 407. After the district court granted the defendant's motion to vacate the judgment against him, the plaintiff appealed, but the Ninth Circuit affirmed. It distinguished between an "error" in the exercise of jurisdiction which would *not* render a judgment [17] "void" versus "total want of jurisdiction over the claim," which was the case there and which rendered the judgment void for purposes of Rule 60(b)(4). *Id.* at 409.

Another example is *Bestway Prods.*, 151 B.R. at 538, where the bankruptcy court determined that a chapter 7 discharge order, which had been entered in the corporate debtor's previous bankruptcy case should be vacated. The court determined such error to be "egregious" because "no court has the power to grant such a discharge to a corporation under § 727(a)(1), and thus, jurisdiction was completely lacking. *Id.*

Here, even if one accepts Sassons argument that the bankruptcy court may have erred by entering a judgment that it was barred from entering, this fact did not divest the bankruptcy court of its jurisdiction to enter a money judg-

ment in such nondischargeability proceeding. Any perceived error was not so egregious as to render the 1991 Judgment void. The 1991 Judgment was therefore a valid and final judgment and was entitled to res judicata effect. *See Robertson v. Isomedix, Inc. (In re Intl'l Nutronics, Inc.)*, 28 F.3d 965, 969 (9th Cir. 1994) (res judicata requires a valid, final judgment on the merits).

In this respect, Sasson argues that this appeal should be governed by *Heckert v. Dotson (In re Heckert)*, 272 F.3d 253 (4th Cir. 2001), a Fourth Circuit case with similar facts. In *Heckert*, in 1983, the creditor obtained a wrongful termination judgment for $7,000 against the debtor. In 1987, the debtor filed a chapter 7 bankruptcy. In 1988, on the creditor's complaint, the bankruptcy court entered an order which held that [18] the state court judgment was nondischargeable. The bankruptcy court also entered a money judgment for $7,000 plus accrued interest at both the state and federal rate (accruing postpetition). *Heckert*, 272 F.3d at 256.

In 1996, after the state's ten-year period for executing on the state court's 1983 judgment had expired, the creditor attempted to execute on the 1988 federal judgment. As in the case at bar, the debtor in *Heckert* sought the bankruptcy court's protection by reopening the adversary proceeding and filing a motion to vacate the bankruptcy court's judgment as void and to quash the enforcement process. The bankruptcy court denied the motions, and its decision was affirmed by the district court.

The Fourth Circuit, however, reversed, holding that the bankruptcy court had initially exceeded its jurisdiction by entering its own money judgment to replace the state court judgment. *Heckert*, 272 F.3d at 257. The Court of Appeals concluded that such an act was barred by the doctrine of res judicata, because a "federal court, as a matter of full faith and credit, under 28 U.S.C. § 1738, must give a state court judgment the same preclusive effect as the courts of such State' would give." *Heckert*, 272 F.3d at 257. It explained that the bankruptcy court's error consisted both in its *de*

facto extension of the deadline for execution on the judgment from 1993 to 1998 (10 years after the federal judgment) and in allowing the debt to include the federal, rather than the state, interest rate.

We disagree with the result in *Heckert*. The Fourth Circuit did not appear to consider fully authority which would prohibit [19] a collateral attack on an original determination of subject matter jurisdiction, since the facts in *Heckert* concerned a direct attack on an order in a reopened case. *Heckert*, 272 F.3d at 256 (declining to apply *Chicot Co. Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940)).

We do not believe the particular manner of challenge affects the validity of a judgment. A judgment can always be attacked directly; the law also allows a collateral attack when other factors outweigh the policy which traditionally favors finality. 13A Wright et al. *supra*, § 3536. However, the analysis of whether a judgment is void is the same in either type of challenge:

> A judgment is not void merely because it is erroneous. It is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law.
>
> It must be noted, however, that a court has jurisdiction to determine its own jurisdiction. . . . a court's determination that it has jurisdiction of the subject matter is binding on that issue, if the jurisdictional question actually was litigated and decided, or if a party had an opportunity to contest subject-matter jurisdiction and failed to do so.

11 Wright et al., *supra*, § 2862 (footnotes omitted).

Additionally, although *Heckert* distinguished between direct and collateral attacks, and thus gave the bankruptcy court's judgment no res judicata effect, it nonetheless applied res judicata principles to vacate the bankruptcy court's judgment. It held that the bankruptcy court violated the Full Faith and Credit statute, 28 U.S.C. § 1738, by allowing

relitigation of the underlying claim. *Heckert*, 272 F.3d at 258-60.

The legal authorities, however, maintain that even errors [20] concerning the applicability of res judicata do not prevent the application of the finality doctrine. *See* 18 Wright et al., *supra*, § 4404, at 72. Thus, in the instant case, the 1991 judgment, wherein the bankruptcy court settled damages based upon the amount of the state court judgment, was itself entitled to res judicata effect, and such determination of damages stemming from Sasson's manipulative postjudgment conduct did not render the judgment void.

We therefore conclude that the bankruptcy court's entry of the 1991 monetary judgment, even if one accepts the argument that it was erroneous (which we do not), was not so egregious an error that it rendered the 1991 Judgment void. The bankruptcy court was correct, therefore, in holding that the 1991 Judgment was not subject to vacatur under Rule 60(b)(4).

C. Bankruptcy Court Can Enforce its Judgment

Sasson also maintains that even if the bankruptcy court's judgment was valid, the bankruptcy court lacked jurisdiction to enforce the judgment since the case was closed years ago. Sasson argues that the enforcement proceedings must come within the court's "related to" jurisdiction in order for the court to entertain Sokoloff's collection activities, but that it cannot do so, since there is no longer an estate. *See* 28 U.S.C. § 1334(b).

The bankruptcy court determined that the enforcement of the 1991 Judgment proceeded properly under Rule 69. Rule 69 provides that the

> [21] [p]rocess to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice

> and procedure of the state in which the district, court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held.

Fed. R. Civ. P. 69(a)/Fed. R. Bankr. P. 7069.

Rule 69 is not jurisdictional, but merely incorporates the state law procedures for the enforcement of judgments entered in bankruptcy court. *See generally*, 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure: Civil 2d* § 3011 (1997). Therefore, the only issue before us is whether a judgment can be enforced once the underlying case has been administratively closed.

In our Circuit, we have held that a bankruptcy court has continuing jurisdiction to enforce its orders because such natters are "ancillary" to the judgment.[21] *See Lawson v. Tilem (In re Lawson)*, 156 B.R. 43, 46 (9th Cir. BAP 1993). In *Lawson*, we explained that "[a]ctions are said to be ancillary to the original suit when brought in aid of an execution or to effectuate a judgment entered in the prior suit." *Id.* Thus, given though, in Lawson, the bankruptcy case had been dismissed [22] and there was no longer a bankruptcy estate, we affirmed the bankruptcy court's imposition of a lien to enforce its fee award.[22]

---

[21] Congress codified much of the common-law doctrine of ancillary jurisdiction as part of "supplemental jurisdiction" in 28 U.S.C. § 1367.

[22] We are not bound by the following contrary case authority from other circuits, relied upon by Sasson: *Bass v. Denney (In re Bass)*, 171 F.3d 1016, 1024 (5th Cir. 1999) (collection of a money judgment emanating

Lawson makes sense, regarding dischargeability judgments, from both legal and practical perspectives. Ancillary matters are "in effect a continuance of the original suit." *Jones v. Nat'l Bank of Commerce of El Dorado*, 157 F.2d 214, 215 (8th Cir. 946) (relied upon by *Lawson*). A court having subject matter jurisdiction over the primary lawsuit will also have ancillary jurisdiction over dependent claims or enforcement proceedings subsequent to judgment. *See Peacock v. Thomas*, 516 U.S. 349, 355 (1996) (ancillary jurisdiction extends to claims that are dependent on the primary lawsuit, but there must be an independent basis for federal jurisdiction over the primary lawsuit); *Hamilton v. Nakai*, 453 F.2d 152, 156 (9th Cir. 1971) (a court's subject matter jurisdiction includes the power to enforce its judgment).

Procedurally, Rule 69 governs all judgment enforcement activity during the life of the bankruptcy case so that it "remains under the supervision and control of the bankruptcy [23] court." *Arneson v. Farmers Ins. Exchange (In re Arneson)*, 282 B.R. 883, 893 (9th Cir. BAP 2002). Rule 69 would be meaningless if it did not have application after administrative case dismissal or closure. *See* 12 Wright, Miller & Marcus, *supra*, § 3013 (stating in discussion of Rule 69 that "[t]he federal court has ancillary or supplemental jurisdiction for supplementary proceedings to enforce its judgment.") *See also Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 905 (9th Cir. BAP 1999) (a bankruptcy court's "arising under" jurisdiction to determine if a debt is excepted from discharge survives the dismissal or closing of the bankruptcy case).

---

from a bankruptcy case did not fall under the court's ancillary jurisdiction because it was a "new and independent action"); *HOC, Inc. v. McAllister (In re McAllister)*, 216 B.R. 957, 965-66 (Bankr. N.D. Ala. 1998) (no jurisdiction to entertain a garnishment brought against a nonparty in a no-asset chapter 7 case); *Edwards v. Sieger (In re Sieger)*, 200 B.R. 636, 639 (Bankr. N.D. Ind. 1996) (bankruptcy court's purpose and, thus, jurisdiction ends with the judgment declaring a debt to be nondischargeable).

Ancillary enforcement jurisdiction is a "creature of necessity." *Peacock*, 516 U.S. at 359. Since there is no uniform body of federal law that deals with how a party can collect upon a federal judgment, Rule 69 simply engrafts a state court's supplementary proceedings into the federal jurisdiction, providing a "fast and effective mechanism[] for execution." *Id.* Thus, state procedures, such as debtors' examinations, garnishment and execution can proceed via the Bankruptcy Clerk's office and the U.S. Marshal in order for a litigant to enforce a federal judgment.

Practically, the enforcement system governed by Rule 69 also makes sense. A party is not required to take a federal judgment through a state court's clerk, sheriff, or judicial bodies. Enforcement stays with the federal court that entered the judgment. Rule 69's application is simple and easy in practice. Fewer technical problems manifest themselves in the enforcement arena, allowing courts familiar with the parties and **[24]** the reasons behind the judgment to more expeditiously deal with the details of a collection or procedural problem.

Therefore, we conclude that the bankruptcy court had ancillary jurisdiction to enforce the 1991 Judgment.

CONCLUSION

The bankruptcy court had jurisdiction to determine its jurisdiction and enter the monetary judgment, and any error in its analysis, or failure to give full faith and credit to the state court judgment, did not render the 1991 Judgment nonfinal or void. The bankruptcy court also had supplemental jurisdiction to enforce the 1991 Judgment through Rule 69 collection proceedings. The order denying Sasson's motion to vacate the 1991 Judgment is therefore AFFIRMED.

U.S. Bankruptcy Appellate Panel
of the Ninth Circuit
125 South Grand Avenue, Pasadena, California 91105
Appeals from Central California (626) 229-7220
Appeals from all other Districts (626) 229-7225

NOTICE OF ENTRY OF JUDGMENT

BAP No. NC-02-1410-MaMeP

RE: ROBERT SASSON

A separate Judgment was entered in this case on 5/27/03.

BILL OF COSTS:

Bankruptcy Rule 8014 provides that costs on appeal shall be taxed by the Clerk of the Bankruptcy Court. Cost bills should be filed with the Clerk of the Bankruptcy Court from which the appeal was taken.

9th Cir. BAP Rule 8014-1

ISSUANCE OF THE MANDATE:

The mandate, a certified copy of the judgment sent to the Clerk of the Bankruptcy Court from which the appeal was taken, will be issued 7 days after the expiration of the time for filing a petition for rehearing unless such a petition is filed or the time is shortened or enlarged by order. See Federal Rule of Appellate Procedure 41.

APPEAL TO COURT OF APPEALS:

An Appeal to the Ninth Circuit Court of Appeals is initiated by filing a notice of appeal with the Clerk of this Panel. The Notice of Appeal should be accompanied by payment of the $105 filing fee and a copy of the order or decision on appeal. Checks may be made payable to the U.S. Court of Appeals for the Ninth Circuit. See Federal Rules of Appellate Procedure 6 and the corresponding Rules of the United States Court of Appeals for the Ninth Circuit for specific time requirements.

CERTIFICATE OF MAILING

The undersigned, deputy clerk of the U.S. Bankruptcy Appellate Panel of the Ninth Circuit, hereby certifies that a copy of the document on which this stamp appears was mailed this date to all parties in interest as designated by the Appellant in the Notice of Appeal.

By: Edwina Clay

Deputy Clerk: May 27, 2003

APPENDIX D

[STAMP: FILED July 09 2002 Clerk
United States Bankruptcy Court
San Jose, California]

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE JAMES R. GRUBE, JUDGE

In Re :	Case No. 89-52300-JRG
ROBERT SASSON,	
Debtor.	
SOKOLOFF,	A. P. No. 89-0358
Plaintiff,	
v.	DEFENDANT'S MOTION for VACATING JUDGMENT
SASSON,	
Defendant.	Thursday, June 27, 2002 San Jose, California

Appearances:

For the Movant: Roberts & Elliott
By: James Roberts, Attorney at Law
10 Almaden Boulevard

Suite 500
San Jose, California 95113
(408) 275-9800

Electronic Court Recorder:	United States Bankruptcy Court Clerk of the Court Liz Armendariz 280 South First Street, Room 3035 San Jose, California 95113 (408) 535-5003
Certified Electronic Transcriber:	Palmer Reporting Services P. O. Box 30727 Stockton, California 95213-0727

Proceedings recorded by digital recording; transcript produced by federally-approved transcription service.

[2] Thursday, June 27, 2002 10:46 o'clock a.m.

PROCEEDINGS

THE: COURT: All right. Let' s take number 4.

THE CLERK: Number 4, Sokoloff versus Sasson.

MR. ROBERTS: Good morning, Your Honor. James Roberts for the movant.

THE COURT: Mr. Roberts, I do not agree with you. The difference is that what we have here is not a state court judgment. I don't think the state court judgment has anything to do with this. There was a state court judgment. The state court judgment was *res judicata* really as to only one thing, I believe, at the time. And that is the amount of the claim.

In other words, the claim could not be higher than that, and nobody could argue that the claim was lower because the judgment fixed the amount of the claim as a general proposition.

But absent a lawsuit brought in this Court, that obligation would have been discharged in the bankruptcy. And the lawsuit in this Court is to determine whether or not the judgment is discharged by the bankruptcy. It is not a related-to judgment; it's an arising-under judgment. It's arising under a specific provision of Title 11.

MR. ROBERTS: I agree with parts of what you're saying, and not with other parts, Your Honor.

THE COURT: Okay.

[3] MR. ROBERTS: Okay. The part—

THE COURT: You're free to disagree.

MR. ROBERTS: The part that I agree with is that the judgment that was rendered was as to the issue of dischargeability. And the dischargeability is as to the existing judgment. There cannot be—

THE COURT: No, it's not as to the existing judgment because, in a dischargeability action, I mean—most of the time it is, but it doesn't have to be—because, at least hypothetically, if you had a judgment in a state court that resulted out of two parts of a transaction or something, and I decided hypothetically, again, that one part was fraudulent and the other part was negligence or something that is dischargeable, then the dischargeability judgment could be different from the state court judgment. It couldn't be more, but it could be less if you had two different kinds of conduct and one was dischargeable and the other was not.

MR. ROBERTS: The reason that that fails, Your Honor, is that results in two judgments, and that is not possible. You cannot have a state court judgment and a federal court judgment arising from the same transaction.

Either—one of two thing happens—either the—federal court has the ability to the charge—to determine the dischargeability as the existing state court judgment, or the state court judgment is merged into the federal judgment.

[4] There is no process to allow for merger of the state court judgment in the federal judgment.

THE COURT: See, I—

MR. ROBERTS: So there's only one possible result because you cannot have two judgments for the same dollar amounts.

THE COURT: My view is that this is a federal judgment, that the state court judgment just doesn't matter. I mean, it has some applicability *res judicata* as to the amount of the claim, for example. Since the Supreme Court decision in *Grogan versus Garner*, I can granted summary judgment on a dischargeability case—

MR. ROBERTS: Yes.

THE COURT: —on a state court judgment. Before the Supreme Court decided that case I could not, because the standard of proof in the state court was preponderance of the evidence, and the standard proof for dischargeability was clear and convincing evidence, so I had to retry everything.

MR. ROBERTS: Well, again,—

THE COURT: And a lot of these cases I try have no state court judgment. I mean, they're just—

MR. ROBERTS: Well, there's a huge difference, that they're—

THE COURT: There's a pending claim.

MR. ROBERTS: As the cases make it a huge distinction, [5] as I'm sure you went through them, if there is no state court judgment the federal court here has the right to liquidate a dollar amount for the transaction.

THE COURT: That's true.

MR. ROBERTS: If there—if there's an existing state court judgment, the only issue is dischargeability of the existing state court judgment.

THE COURT: I—No, I disagree with that—

MR. ROBERTS: Okay.

THE COURT: —under the example I just gave you. If you had somehow in the state court sort of two damage

claims that that judgment covered and one was negligence, part of it was negligence, that would be dischargeable. And if the other part of it was, say, hypothetically fraud, that could be nondischargeable. So I don't think, as a matter of law, the whole state court judgment goes up or down together.

MR. ROBERTS: Okay. Again, Your Honor, the failure of that is it results in two enforceable judgment at the same time, and that is not possible.

THE COURT: No, because a state court judgment, I don't believe, is enforceable.

MR. ROBERTS: And what makes it unenforceable?

THE COURT: The debtor's discharge in bankruptcy.

MR. ROBERTS: "The debtor's discharge in bankruptcy." All right. Well, we can disagree.

[6] THE COURT: In other words, when a debtor gets a discharge, every single state court judgment out there, whatever it is for—well, that's probably too broad. If it's some kind of a judgment for taxes, taxes pass through bankruptcy under 523 automatically. And so that's probably too broad a statement.

But other than some kind of judgment that is automatically nondischargeable, it would be like taxes, or support, or something like that, it would automatically pass through. They're all discharged. If you have a fraud judgment in the state court, if you have a willful and malicious injury in the state court, it's discharged unless I find under 523 that it's not.

MR. ROBERTS: Well, except that that's what happened here, is that the issue was the dischargeability of that judgment.

THE COURT: No. The interest was—was the dischargeability of what underlay that judgment of the debtor's conduct. In other words, the debtor's conduct has to make it nondischargeable.

MR. ROBERTS: Well, actually Your Honor, as you recall, the findings of fact in this case it was a conduct that came after the judgment that resulted in the nondischargeability.

THE COURT: Well, I'm not here to retry it, because—

MR. ROBERTS: But—but—

[7] THE COURT: —that's a final judgment.

MR. ROBERTS: No, but your finding of facts that's in this, case, the one that we've reopened, were that the conduct that resulted in nondischargeability took place after the judgment. That's what the findings of fact were in this matter.

THE COURT: Okay. I don't—

MR. ROBERTS: Because of the fact —

THE COURT: I'm not here to debate that,—

MR. ROBERTS: Okay.

THE COURT: —because that's a final judgment, and it's what—it is what is. You and I disagree about what is.

MR. ROBERTS: Okay.

THE COURT: I think it is a federal judgment. It is enforceable as a federal judgment. Rule 69 says you can use any federal tools that are available to you to enforce that judgment.

You can also use any enforcement tools that exist in the state in which the federal court is located to enforce that judgment. And that's the judgment that's being enforced, my judgment, not the judgment out of state court.

MR. ROBERTS: Well, I understood that part. On that we have no disagreement. They're currently enforcing this judgment.

THE COURT: He's enforcing this judgment. I don't have any authority that this judgment has expired. As far as I [8] know it is still a good judgment and they're free to enforce it.

MR. ROBERTS: Okay.

THE COURT: Okay?

MR. ROBERTS: Thank you.

THE COURT: Thank you very much. For that reason the motion is denied.

MR. ROBERTS: Thank you.

THE COURT: Thank you.

(The hearing concluded at 10:53 a.m.)

State of California)
) SS.
County of San Joaquin)

I, Nancy Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify I am not a party to nor in any way interested in the outcome of this matter.

I am a Certified Electronic Reporter and Transcriber through the American Association of Electronic Reporters and Transcribers, Certificate No. 00121. Palmer Reporting Services is approved by the Administrative Office of the United States Courts to officially prepare transcripts for the U.S. District and Bankruptcy Courts.

/s/_____

Nancy Palmer
Palmer Reporting Services
Dated July 2, 2002

State of California)
) SS.
County of San Joaquin)

I, George Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I am a Certified Electronic Reporter through the American Association of Electronic Reporters and Transcribers, Certificate No. 00222. I further certify I am not a party to nor in any way interested in the outcome of this matter. Palmer Reporting Services is approved by the Administrative Office of the United States Courts to officially prepare transcripts for the U.S. District and Bankruptcy Courts.

/s/_____
George Palmer
Palmer Reporting Services
Dated July 2, 2002

APPENDIX E

[STAMP: FILED 02 JUL 29 PM 2:39
U.S. BANKRUPTCY COURT NORTHERN DIST. OF CA.
SAN JOSE]

ROBERTS & ELLIOTT
Ten Almaden Boulevard
Suite 500
San Jose, CA 95113
Telephone: (408) 275-9800

JAMES K. ROBERTS, ABN 98804
Attorneys for Debtor/Defendant

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re	)	
	)	CHAPTER 7
ROBERT SASSON,	)	CASE NO. 89-52300 JRG
	)	(Original number
Debtor.	)	5-89-02300 JRG)
	)	
NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN,	)	A.P. NO. 890358
	)	
	)	ORDER DENYING MOTION FOR ORDER VACATING JUDGMENT, ETC.
	)	
Plaintiff,	)	
v.	)	
	)	
ROBERT SASSON,	)	
	)	
Defendant.	)	

The motion of debtor ROBERT SASSON for order vacating judgment, etc. came on regularly for hearing on June 27, 2002. Appearing for the debtor was JAMES K. ROBERTS. There was no appearance by NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN.

[2] The papers having been considered, and argument made, good cause appearing,

THE MOTION IS DENIED.

DATED: July 29,2002

/s/

JAMES R. GRUBE

Judge of the Bankruptcy Court

Supreme Court, U.S.
FILED
MAY 15 2006
OFFICE OF THE CLERK

(3)

No. 05-1171

In The Supreme Court of the United States

ROBERT SASSON,

Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for Camelot Medical Group, Inc., Profit Sharing Plan,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ERWIN CHEMERINSKY
Counsel of Record
DUKE UNIVERSITY SCHOOL OF LAW
Science Drive & Towerview Rd.
Durham, North Carolina 27708
(919) 613-7173

WAYNE A. SILVER
333 West El Camino Real,
Suite 310
Sunnyvale, California 94087
(408) 720-7007

Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether a bankruptcy court has subject matter jurisdiction to enter a money judgment when it concludes, in an adversary proceeding, that a debt which has been reduced to judgment in a state court is nondischargeable.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	iii
Opposition to Petition for Writ of Certiorari	1
Opinions Below	1
Statement of the Case	1
Reason for Denying the Petition for a Writ of Certiorari	4
THE SUPREME COURT SHOULD DENY THE PETITION FOR A WRIT OF CERTIORARI BECAUSE THE COURT OF APPEALS CORRECTLY FOUND THAT THE BANKRUPTCY COURT HAD JURISDICTION TO ENTER A MONEY JUDGMENT ON A DISPUTED STATE LAW CLAIM IN THE COURSE OF MAKING A DETERMINATION THAT THE CLAIM WAS NONDISCHARGEABLE	4
A. The Jurisdiction Of The Bankruptcy Court To Enter A Money Judgment In This Case Was Not Based On Supplemental Jurisdiction	6
B. The Bankruptcy Court Had Jurisdiction To Enforce A Money Judgment In This Case Pursuant To Its Inherent Equitable Powers	9
Conclusion	11

TABLE OF AUTHORITIES

Page

CASES

In re Bobroff, 766 F.2d 797 (3rd Cir. 1985) 8

Kokkonen v. Guardian Life Insurance Co. of America, 511 U.S. 375 (1994) 9

In re Kubly, 818 F.3d 643 (7th Cir. 1987) 9

In re Sasson, 424 F.3d 864 (9th Cir. 2005) 5, 9

In re Walker, 51 F.3d 562 (5th Cir. 1995) 8

STATUTES

11 U.S.C. § 301 2

11 U.S.C. § 523 ..... 2, 3

11 U.S.C. § 727 ..... 2, 3

28 U.S.C. § 157 ..... 6, 7

28 U.S.C. § 1334(b) 5, 8, 9

28 U.S.C. § 1367 ..... 4, 6

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Norman F. Sokoloff, M.D., individually and as Trustee for Camelot Medical Group, Inc., Profit Sharing Plan, hereby opposes the Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.*

OPINIONS BELOW

Respondent adopts and incorporates by reference all opinions and orders below that are set forth in Appendices A-E to the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

On November 18, 1988, Norman F. Sokoloff, M.D., individually and as trustee of Camelot Medical Group, Inc., Profit Sharing Plan, obtained a judgment against Robert Sasson in Santa Clara Superior Court on a cross-complaint for breach of a promissory note. The California Superior Court entered judgment against Sasson for $120,000, plus accrued interest and statutory costs.

Before Sokoloff could enforce the state court judgment, Sasson filed an ex parte motion for reconsideration and obtained a stay of enforcement pending determination

* On April 25, 2006, a Suggestion of Death and Substitution of Party was filed in this Court. Norman F. Sokoloff died on October 29, 2005. Accordingly, it was requested that his representative, Ilene Sokoloff, should be substituted as a party in this matter.

of the motion for reconsideration. The stay was granted subject to the condition that Sasson "not dissipate any assets except in the normal course of business." While the stay was in place and without informing the court of his actions, Sasson dissipated the majority of his assets through dissolution proceedings with his wife, purchase of a new property, creation of encumbrance on that property, and ultimately by payment to other creditors.

On March 3, 1989, the Santa Clara Superior Court denied Sasson's motion for reconsideration and entered a second judgment. An abstract of State Judgment II was recorded in Santa Clara County on April 3, 1989. By this time, however, Sasson had dissipated virtually all of his assets in violation of the state court's stay and State Judgment II was uncollectable.

On May 5, 1989, Sasson filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 301, 701-784, in the United States Bankruptcy Court for the Northern District of California. The judgment owed to Sokoloff was listed as entirely uncollectable because of Sasson's wrongful transfers of property while the state court stay was in effect. Sasson's bankruptcy schedule did not mention Sasson's recent transfer of assets.

Sokoloff filed an Adversary Proceeding to determine the nondischargeability of debt under 11 U.S.C. § 523(a)(6) and to deny the discharge under § 727(a)(2). Under 11 U.S.C. § 523(a)(6) of the Bankruptcy Code, any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" shall not be dischargeable in bankruptcy. Under 11 U.S.C. § 727(a)(2), a debtor may not obtain a discharge if "the debtor, with intent to hinder, delay, or defraud a creditor . . . has

transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed . . . property of the debtor, within one year before the date of the filing of the petition." 11 U.S.C. § 727(a)(2).

The bankruptcy court rejected the § 727(a)(2) claim, but found that Sasson's transfer of assets in violation of the state court stay constituted a willful and malicious injury under § 523(a)(6). The court entered a judgment for $148,142.46 plus costs and accruing interest. Sasson filed an appeal of this decision, but later dismissed it. Subsequently, both Sasson's bankruptcy and the adversary proceeding were closed by the bankruptcy court.

Sokoloff continued to pursue collection remedies in bankruptcy court. Sokoloff filed a notice of the judgment lien and recorded an abstract of judgment. Sokoloff then obtained a Writ of Execution to the United States Marshal and instructed the Marshal to levy on Sasson's wages. Sasson filed a claim of exemption, which the court granted in part.

In 2001, Sokoloff renewed the 1991 Judgment. The bankruptcy court issued an Abstract of Judgment for $239,160.42 on July 9, 2001, which was then recorded. Subsequently, the bankruptcy court granted Sasson's ex parte motion to reopen his Chapter 7 proceedings for sixty days. Sasson then filed a motion pursuant to Federal Rule of Civil Procedure 60(b) to vacate the 1991 money judgment and to quash the 2001 abstract of judgment. In his motion, Sasson argued that the bankruptcy court lacked subject matter jurisdiction to enter a new federal money judgment and therefore the renewal of judgment and

abstract of judgment were void ab initio. The bankruptcy court denied the motion after a hearing.

Sasson filed a notice of appeal, which was referred to the Bankruptcy Appellate Panel. The Bankruptcy Appellate Panel affirmed the bankruptcy court's decision, holding that the bankruptcy court had jurisdiction both to enter the 1991 judgment of nondischargeability and to determine the amount of damages caused by Sasson's postjudgment conduct. Sasson appealed to the United States Court of Appeals for the Ninth Circuit, which affirmed the Bankruptcy Appellate Panel's decision.

REASON FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

THE SUPREME COURT SHOULD DENY THE PETITION FOR A WRIT OF CERTIORARI BECAUSE THE COURT OF APPEALS CORRECTLY FOUND THAT THE BANKRUPTCY COURT HAD JURISDICTION TO ENTER A MONEY JUDGMENT ON A DISPUTED STATE LAW CLAIM IN THE COURSE OF MAKING A DETERMINATION THAT THE CLAIM WAS NONDISCHARGEABLE.

The Petition for a Writ of Certiorari focuses on the issue of whether bankruptcy courts may exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367. However, this case does not provide an appropriate vehicle for addressing this question because the bankruptcy court had jurisdiction, *independent of supplemental jurisdiction*, to render a monetary judgment in the course of making a determination that a debt was nondischargeable. This falls

within the bankruptcy court's jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).

Indeed, before ever mentioning supplemental jurisdiction, the Court of Appeals explained that it was basing jurisdiction on the power of the bankruptcy court to issue judgments in cases properly before it. The Court of Appeals declared: "[T]he bankruptcy court clearly has the power under the Bankruptcy Code to determine whether a debt is nondischargeable, to 'determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof,' and to 'issue any order, process, or judgment that is necessary or appropriate in carrying out' the order of nondischargeability." *In re Sasson*, 424 F.3d 864, 868 (9th Cir. 2005).

The Court of Appeals stressed that the bankruptcy court's order fit within the scope of § 1334(b). The Court of Appeals explained: "A bankruptcy court's 'related to' jurisdiction is very broad, 'including nearly every matter directly or indirectly related to the bankruptcy.'" *Id.* In addition, the Court of Appeals stressed that "[i]n addition, bankruptcy courts retain their traditional equitable powers under the Bankruptcy Code." *Id.* at 869.

Thus, without even needing to consider supplemental jurisdiction, the Court of Appeals was able to conclude: "Given the text and history of the Bankruptcy Code and the bankruptcy court's inherent equitable powers, it is clear . . . that bankruptcy courts have jurisdiction and power to enter money judgments in adjudicating nondischargeability adversary proceedings." *Id.* at 870.

Therefore, this case does not provide an appropriate basis for this Court to consider whether bankruptcy courts

may exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 because the Court of Appeals found jurisdiction entirely apart from supplemental jurisdiction.

A. The Jurisdiction Of The Bankruptcy Court To Enter A Money Judgment In This Case Was Not Based On Supplemental Jurisdiction.

The key flaw in the Petition for Certiorari is its assumption that the bankruptcy court's jurisdiction was based on supplemental jurisdiction, rather than the bankruptcy court's jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases arising under title 11." 28 U.S.C. § 157(a). The Petition argues:

> "This dispute over the underlying nondischargeable debt does not fall within the 'arising under' or 'arising in' jurisdiction conferred by section 1334. Nor is it included within the 'related to jurisdiction', because such an action runs against the debtor personally, not against the estate. A judgment on such a debt can be enforced only against the debtor himself and those of his assets (such as post bankruptcy earnings) that fall outside the bankruptcy estate." Pet. at 14-15.

This argument is erroneous because Sokoloff had the same rights as any other creditor against Sasson's bankruptcy estate; the fact that Sokoloff's claim was nondischargeable gave him additional rights to look beyond Sasson's bankruptcy discharge to seek collection of his claim. To argue otherwise defies logic; why would a creditor that was defrauded, or the victim of an intentional tort, lose the right to participate in a distribution from the debtor's estate along with other creditors?

The case at bar arrived in the bankruptcy court in the form of an adversary complaint seeking to establish both the underlying claim and a determination that the claim was nondischargeable. The bankruptcy court unquestionably had subject matter jurisdiction over the nondischargeability question under 28 U.S.C. § 157(b)(2)(I), as a "core" matter. The bankruptcy court also had subject jurisdiction over the amount of the claim, under 11 U.S.C. § 157(b)(2)(B) and (O).

Therefore, this case did not require the Court of Appeals to consider, or provide an appropriate vehicle for this Court to decide, whether bankruptcy courts can exercise supplemental jurisdiction. Simply put, if the bankruptcy court here had "related to" jurisdiction to enter the money judgment, analysis of supplemental jurisdiction would not be necessary; any split in the Circuits on that issue would hence be irrelevant. The bankruptcy court did have "related to" jurisdiction because the anticipated outcome of the litigation in the Bankruptcy Court unquestionably altered the rights, obligations, and choices of action of the debtor. It established a claim against him and determined that claim would survive the bankruptcy discharge.

Moreover, it should be noted that the record is devoid of any information on the Sasson's bankruptcy estate; it is unknown if the Trustee administered it, or even if there was a distribution to creditors. But regardless, the litigation was part of the claims resolution process, which is a core purpose of the bankruptcy court and which always effects the "handling and administration" of the estate.

At the very least, this case is not an appropriate vehicle for this Court to decide whether bankruptcy courts

may exercise supplemental jurisdiction because there is no indication from the Court of Appeal's decision that supplemental jurisdiction was in any way necessary for the bankruptcy court's jurisdiction and decision.

The cases relied on by Sasson in attempting to demonstrate a conflict among the Circuits are distinguishable because unlike this case they did not involve jurisdiction that was "related to" the claim before the bankruptcy court. For example, Sasson several times cites to *In re Walker*, 51 F.3d 562 (5th Cir. 1995), as conflicting with the Ninth Circuit's opinion in this case. Pet. at 5, 11, 20. But in fact, the *Walker* court spoke of the bankruptcy courts as having broad jurisdiction to hear claims relating to the bankruptcy matter, exactly the conclusion of the Ninth Circuit. The Fifth Circuit explained: "As several courts have commented, "[t]here are . . . strong . . . arguments to support the position that the 'relate to' and 'arising in' jurisdictional components of § 1334(b) already allow bankruptcy courts to hear, to the extent Congress intended, all supplemental claims that have a logical relationship to an underlying bankruptcy proceeding." 51 F.3d at 573 (citations omitted). At most, the Fifth Circuit's decision in *Walker* stands for the proposition that supplemental jurisdiction cannot be used as an independent basis for bankruptcy court jurisdiction; it does not however contravene the argument that supplemental jurisdiction can be used to effectuate a bankruptcy court's order in a matter that is "related to" a matter properly before it.

Similarly, Sasson points to *In re Bobroff*, 766 F.2d 797 (3rd Cir. 1985), to illustrate the conflict among the Circuits. Pet. at 5, 11. But in *Bobroff*, while the claim was in favor of the debtor, the Third Circuit found that the particular claim was not property of the debtor's bankruptcy estate,